

1 CALIFORNIA HORSE RACING BOARD
2
3 REGULAR MEETING
4 Thursday, January 22, 2004
5 10:10 A.M.
6
7 ARCADIA CITY COUNCIL CHAMBERS
8 240 West Huntington Drive
9 Arcadia, California
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13 BOARD MEMBERS PRESENT:
14 JOHN C. HARRIS, Chairman
15 WILLIAM A. BIANCO, Commissioner
16 ALAN W. LANDSBURG, Commissioner
17 ROGER H. LICHT, Commissioner
18 MARIE G. MORETTI, Commissioner
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20
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22
23
24 Reported by: NEALY KENDRICK, CSR 11265
25 Job No.: 04-25975

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1 ARCADIA, CALIFORNIA; THURSDAY, JANUARY 22, 2004

2 10:10 A.M.

3

4 MR. MINAMI: Ladies and gentlemen, this is the
5 meeting of the California Horse Racing Board, January
6 22, at the Arcadia City Hall in Arcadia, California.
7 Present at today's meeting are Commissioner Marie
8 Moretti, Commissioner Roger Licht, Commissioner
9 Alan Landsburg, Commissioner William Bianco, and
10 Chairman John Harris.

11 At this time, I would like to ask all
12 those who are providing testimony today to give your
13 name and your organization that you're representing
14 so that the court reporter can make sure that it gets
15 in the record.

16 For now, I'll turn the meeting over to
17 Chairman John Harris.

18 CHAIRMAN HARRIS: Yeah. I'd like to welcome
19 everyone to the meeting. I'd like to make a couple
20 remarks since this is my first meeting as a chairman.
21 I'd just like to thank my fellow Board Members for
22 electing me chairman.

23 And I really appreciate the
24 outstanding job that Roger Licht and Alan Landsburg
25 have done in the last couple of years that preceded

1 me. And I feel that I have a tough act to follow.

2 I think CHRB is a very important part
3 of the total California racing. And I think our role
4 and oversight is critical to the health of racing.
5 And I want to do everything I can -- and I think the
6 Board joins me -- in trying to enhance the overall
7 horse industry and all the economic activity created
8 and at the same time maintain the very high integrity
9 that we need and are respected for.

10 And I think we all realize that racing
11 is in a difficult time right now. All segments of
12 the industry have experienced cost increases and at
13 the same time are not seeing revenue increases, due
14 to, you know, increased wagering in total.

15 And some of the obvious fixes we've
16 got out of the way. The licensing-fee reduction,
17 we've achieved a few years ago. We introduced ADW.
18 And those things have helped some. But still we've
19 got some serious problems. And I'm concerned if
20 racing is sustainable unless we figure ways to regain
21 fans and revitalize handle.

22 And these are issues that we've worked
23 on for a long time. And there's no one that really
24 has all the answers. But I think we need to work
25 with the industry to try to move it forward and turn

1 around some of these negative trends. So I'm proud
2 to be in this position. And I want to work hard.

3 And I appreciate everyone's help. And
4 any input my fellow Board Members and the industry or
5 any fans or anybody out there can give me, we're
6 certainly willing to listen. And I think it's
7 important that we all participate in all these
8 deliberations.

9 Before we get into the agenda, I might
10 mention that actually John Sperry, Sheryl Granzella,
11 and Roy Wood are all not here today due to health
12 reasons and travel reasons but should be back with us
13 soon.

14 The first item on the agenda is
15 discussion and action by the Board on the application
16 for license to conduct a horse racing meeting of
17 Capitol Racing, LLC, from March 5 through July 31,
18 2004, inclusive.

19 MR. REAGAN: Commissioners, John Reagan, CHRB
20 staff. I can report on that to you.

21 As indicated, it will be a meet from
22 March 5 through July 31, 2004, at Cal Expo in
23 Sacramento. That represents 82 nights of racing.
24 Racing will be Wednesday through Saturday, first live
25 post at 5:35 with a first simulcast post

1 approximately 4:50. The wagering format is included
2 in the board -- in the package, in the application in
3 the package.

4 However, there has been a last-minute
5 amendment. The association is requesting a \$2 Pick-6
6 to begin on Race Number 4. That would be in addition
7 to the format, the wagering format in the package --
8 a \$2 Pick-6 on Race Number 4.

9 Overall, the package is complete, with
10 the inspection of the backstretch housing completed
11 already.

12 However, in this particular case, due
13 to issues regarding the Board's order from May 12 of
14 2003, staff cannot recommend approval of this
15 application at this time.

16 CHAIRMAN HARRIS: Are you here from the
17 applicant?

18 MR. BIERI: Chairman Harris, Members of the
19 Commission, my name is Steve Bieri. It's spelled
20 B-i-e-r-i. And I am the managing member and owner of
21 Capitol Racing.

22 And I stand before you today to state
23 that, going along with the staff's recommendation,
24 we do not believe is the correct path. We believe
25 the staff has erred and that, if you were to do what

1 they suggest, you would be doing the wrong thing.

2 And you'd be doing the wrong thing for
3 several reasons, generally speaking, one, because
4 what they're suggesting is illegal and ignores the
5 laws of the State of California; and, two, what
6 they're suggesting is not in the best interests of
7 horse racing.

8 In no particular order of importance,
9 but a little more specifically, the Board lacks the
10 power to award any kind of monetary damages. As I've
11 stated, the Board has failed to take into account the
12 best interests of horse racing if you did go with
13 this unprecedented recommendation to deny our
14 license.

15 The Board must find that Capitol
16 Racing is in full compliance with the May 12, 2003,
17 order. Specifically the Board ordered that Capitol
18 Racing pay pursuant to the formulas of the Zumbrun
19 agreement. Those formulas do not require Capitol
20 Racing to pay anything, as Capitol Racing was not a
21 party to the agreement.

22 The Zumbrun agreement expired in 2000.
23 And thus the formulas do not require any present
24 payments from any party. And the Zumbrun agreement
25 cannot now contemplate any payments, as the formulas

1 require payments for racing immediately preceding the
2 racing at Los Alamitos. And there is no harness
3 racing at Los Alamitos.

4 The May 12, 2003, order requires
5 payments between the date of that order and now. The
6 Board appears to base its decision on Capitol
7 Racing's failure to pay the pre-May 12, 2003, monies,
8 which were not required to be paid by the May 12,
9 2003, order.

10 By requiring payments for accepting
11 the signal, the Board is acting in direct
12 contravention to the Maddy bill, which requires that
13 Los Alamitos take the Capitol Racing signal without
14 Capitol Racing paying additional fees for that to
15 occur.

16 And this is -- all that is going
17 forward right now on this topic is the subject of
18 litigation. And by acting now, before a court has an
19 opportunity to rule on the pending litigation, the
20 Board is acting arbitrarily and capriciously.

21 Some of that was recommended to me to
22 be read into the record. I'm not really used to
23 having to do all these formalities.

24 But what I would ask you to do is to
25 do the right thing. The right thing is to approve

1 our license. The right thing is to -- is that
2 harness racing continues uninterrupted in the State
3 of California.

4 And the right thing is that we
5 continue to work on our disputes in the appropriate
6 forums. So please overrule the staff's
7 recommendation and approve our licensed today. Thank
8 you.

9 CHAIRMAN HARRIS: Can we hear from some of the
10 other impacted parties in this?

11 MR. LICCARDO: Ron Liccardo, Pari-Mutuel
12 Employees.

13 Obviously I'm here to say that this
14 would impact my industry or my employees -- my
15 members. All throughout the whole state, I have
16 members that sell the Capitol signal and in
17 conjunction with Los Alamitos, they do. But my crews
18 would be greatly reduced if you deny their license.

19 I think you should let the court
20 settle it or do whatever's the best thing for racing.
21 Thank you.

22 CHAIRMAN HARRIS: Do we have some other
23 comments from the industry or the --

24 MR. FREIDBERG: I don't know if I qualify, but
25 I am a horse owner and breeder and have been for 29

1 years. And I would like to make some comments.

2 CHAIRMAN HARRIS: Yeah. You'd qualify.

3 MR. FREIDBERG: When you said, "interested
4 parties" --

5 CHAIRMAN HARRIS: Well, yeah.

6 MR. FREIDBERG: -- I guess I am an interested
7 party from that standpoint.

8 CHAIRMAN HARRIS: I meant that in a pretty
9 wide context.

10 MR. FREIDBERG: My name is Ed Freidberg. I'm
11 an attorney from Sacramento, and I've owned harness
12 horses and bred harness horses since 1974. And in
13 1975, I was the president of Golden Bear Raceway, in
14 which we operated a harness horse meet at Cal Expo in
15 Sacramento. And since that time, I've owned and bred
16 horses up to the present time.

17 I am speaking on behalf of a number of
18 harness owners and breeders in California. And I
19 want to address my comments to the financial problems
20 that I see in the applicant's application to operate
21 this meet. As a concerned citizen and harness owner
22 and on behalf of my clients, I'd like to just examine
23 a few points in their financial statements.

24 We want a harness operator to operate
25 a meet in California and at Cal Expo. We want that

1 to happen, but we have to have an organization that
2 has the financial ability to handle their
3 obligations. They're taking in, I understand, over a
4 hundred million dollars a year in their meet.

5 And if you look at the financial
6 statements that they have provided to the Board,
7 they're totally inadequate to show financial solvency
8 to operate a meet. So if I could have just a moment
9 to go over a few points with you, I would appreciate
10 that. May I do that?

11 CHAIRMAN HARRIS: Sure.

12 MR. FREIDBERG: Okay. If you look at their
13 financial statements -- and the last that has been
14 supplied to the Board is as of December 31, 2002. In
15 that financial statement they state, as an asset,
16 "Overpaid purses receivable of \$1,200,000."

17 Now, in the first place, to get to
18 this level is, in our view, in violation of the
19 Business and Professions Code, which requires that
20 they reasonably allocate the purses. And when
21 they -- this payment of 1.2 million that they claim
22 is an overpayment is basically unconscionable.

23 In addition to that, we understand
24 from reliable information that, as of the current
25 time, they have overpaid the purses by \$2 million.

1 Now, they cannot recover for the paid -- purses that
2 they've overpaid unless they reimburse themselves out
3 of the horsemen's purse pool in one year.

4 And I have provided a letter to the
5 Board, which I assume has been circulated, in which,
6 on behalf of my clients, I request that any license
7 given to this organization be conditioned that they
8 cannot take money out of the horsemen's pool because
9 it would be in violation of law.

10 They only have one year to take money
11 out to reimburse themselves. And they are also in
12 violation because it's an unreasonable allocation for
13 them to get into this situation. But to claim it as
14 an asset is nonsense. It's not an asset. They can't
15 get it. They can't get it legally.

16 So you take that off of their
17 financial sheet.

18 Also they, on their financial sheet,
19 claim that have advanced \$1,249,000 to horsemen. And
20 they list that as an asset.

21 Yet, in their footnote -- Footnote
22 4 -- they say they don't have any documentation.
23 They don't have any promissory notes. They don't
24 even have IOUs. They don't have the terms of the
25 loan. They don't have the amount of the loan. And

1 they don't have any time period to pay the loans.

2 Now, can you imagine what a bank would
3 give you for -- as collateral to have these loans
4 that they claim they've given people of \$1.2 million
5 and go to a bank to use it as collateral? It's
6 valueless. It has no value.

7 But yet they show, on their financial
8 statement, \$1.24 million. Now, you take out the
9 1.223 that they've -- the \$2 million that they've
10 overpaid in purses; the 1.249 that they have on these
11 alleged advances to horsemen, which they admittedly
12 have no documentation; and they have reduced their
13 assets by \$3.25 million.

14 Now, based upon their financial
15 statement, in which they have capital of \$2,800,000,
16 they are underwater. They're in the red \$400,000.

17 And we have haven't got to the issue
18 that Mr. Bieri just spoke about -- about their
19 obligation to the Los Alamitos Quarter Horsemen's
20 Association, which as I understand, is somewhere in
21 the neighborhood of 2,691,000.

22 And so this organization, at the same
23 time that they have created this financial -- this
24 abysmal financial position, has taken out in
25 distributions from 19 -- from the Year 2000 to the

1 Year 2002 -- in those three years, they've taken out
2 \$4 million out of the organization. And if they did
3 what they have done in the past, they would have
4 taken another \$1.3 million in January of this year,
5 for a total of \$5.3 million.

6 Now, what we're asking is, for you to
7 consider approving the license, you must require Mr.
8 Bieri and his organization to put up a fund that you
9 feel is sufficient so that they will have the
10 financial stability -- put the money back in this
11 company that is dealing with hundreds of millions of
12 dollars for the protection of the horsemen and for
13 the protection of the public.

14 Nobody would allow a company with this
15 financial condition, which has stripped its
16 organization of the money out of it and has run up a
17 deplorable financial condition, to operate a business
18 in which they come into a hundred million dollars.

19 It just isn't going to be done. No
20 one's going to allow it. And I submit this Board
21 should not allow it.

22 However, there's no reason why they
23 can't put this money back in, why this Board cannot
24 supervise it to make sure that they have the
25 financial stability to operate this meet.

1 And, finally, I would say that we
2 request that any license given to them be conditioned
3 on the fact that they do not make any attempt to try
4 to reduce what the horsemen are entitled to by purses
5 by their alleged overpayments. Thank you very much.

6 MR. SCHIFFER: Good morning. My name is Dan
7 Schiffer. I represent the Pacific Coast Quarter
8 Horse Racing Association. Mr. Alessio, the president
9 of our association, is also in the audience; but he
10 asked me to speak to this body at present.

11 The horsemen are very concerned by the
12 nonperformance of the order of this body on May 12.
13 I have with me today a petition from the horsemen,
14 which I would like to read into the record and then
15 give to the Board.

16 It says, "We, the undersigned, are
17 licensed horsemen who train and race at Los Alamitos
18 racetrack. We have suffered ongoing and substantial
19 hardship caused directly by the failure of Capitol
20 Racing to pay to Los Alamitos the impact fees due and
21 owing over the past three-and-a-half years.

22 "These impact fees are divided between
23 Los Alamitos and the horsemen and go to increase our
24 purses. The harm caused by Capitol Racing's failing
25 to pay these impact fees has been double because, not

1 only did we not receive those monies, our handle was
2 reduced by our patrons betting their monies on the
3 harness signal instead of our live product.

4 "These are tough times for the
5 horsemen. And we need every penny of purse money to
6 which we are entitled. We know that, if we are
7 unable to meet our financial obligations, the CHRB
8 will enforce their laws against us. We request equal
9 treatment and demand that the CHRB enforce the
10 obligation of Capitol Racing to pay the impact fees
11 they owe to Los Alamitos."

12 There are several funds at present.
13 And the next speaker, I believe, is going to go into
14 details. I would like just like to remind the Board
15 and make them aware that, in January of 2001, all
16 parties affected signed an interim agreement whereby
17 \$5,400 would be put into a pot -- I guess it's a
18 certificate of deposit -- between January and July of
19 that year.

20 There's, I believe, somewhere around
21 \$550,000. Now, that agreement specifies that the
22 Board can order distribution of those monies. And
23 that is what we request today -- that those monies be
24 released by order of this Board to the Los Alamitos
25 and subsequently to us.

1 In addition, there's another fund of
2 money that belongs to the horsemen sitting at Los
3 Alamitos -- approximately \$1.3 million -- which we
4 also would request be released in payment of what is
5 owed.

6 And, finally, I was here in October.
7 I expressed my doubts on the ability of these parties
8 to reach an agreement concerning all of these issues.
9 That is, in fact, what has happened. There's been no
10 agreement. And it's time, unfortunately, for the
11 Board to take a stand and do what the parties
12 themselves together have been unable to do. Thank
13 you.

14 MR. "ENGLISH": My name's "Richard English"
15 (phonetic). I'm a C.P.A. And I'm a consultant for
16 Pacific Coast Quarter Horse Racing association and
17 also Los Alamitos Quarter Horse Racing Association.

18 And I've prepared reports in the past
19 that I've submitted to the Board, through John
20 Reagan, computing the impact fees, as computed in
21 accordance with the April 6 memo between Alan
22 Horowitz and myself in 1996.

23 And as of December 31, the end of the
24 last harness meet, my computations, which I reviewed
25 with the Board, indicate the net impact fees due Los

1 Alamitos under that contract -- under that agreement
2 are \$3,538,942.

3 They also owe additional monies to Los
4 Alamitos from inadvertent payment from the ADW
5 funds -- or when ADW was first set up in 2002, there
6 was a problem in how races were allocated -- shared
7 races through ADW and CHRIMS.

8 Accidentally, some associations were
9 overpaid, and Los Alamitos was underpaid. All the
10 other associations have settled up and paid their --
11 paid those monies to Los Alamitos. Capitol has
12 refused to do so.

13 And as of December 31, again, for 2002
14 and 2003, they have withheld \$432,000 of ADW money
15 and \$103,006 of location fees due for ADW. Again,
16 the monies were accidentally paid to them. And if --
17 they've had knowledge of it.

18 The amount was confirmed in the
19 controllers meeting in Del Mar in August of 2002.
20 The numbers were set at that point in time. "Steve
21 Hubbard" (phonetic) participated in it, and no
22 payments have been forthcoming since then.

23 So in total, they owe four --
24 \$4,075,000 -- 3.5 million, again, from the impact
25 fees and over \$500,000 withheld from the ADW

1 proceeds.

2 As an offset, under a separate section
3 of the law, on nights when we race unopposed -- or
4 the quarter -- or the harness meet races unopposed,
5 the purse monies generated on imports on those nights
6 are to be set aside and then shared between
7 associations, 50-50 on the unopposed nights.

8 We have accumulated -- Los Alamitos
9 has accumulated \$1,382,000 of purse -- of shared
10 purses on the harness meet, which we are still -- we
11 hold at this point in time -- which Los Alamitos
12 holds.

13 So when you compare what they owe us
14 and what we owe them, the bottom line is that Capitol
15 Racing, under these agreements, is indebted to the
16 amount of \$2,691,000.

17 That's the status of it at this point
18 in time.

19 CHAIRMAN HARRIS: Just a point of
20 clarification -- would that -- as we go forward, is
21 that increasing?

22 MR. "ENGLISH": The ADW money is not
23 increasing. But the impact fees would be, as would
24 be shared purses on the imports. These numbers,
25 again, were as of the end of the last meets, which

1 closed on December 21 of 2003.

2 CHAIRMAN HARRIS: Thank you.

3 MR. "ENGLISH": Thank you.

4 COMMISSIONER LICHT: John, I think -- my
5 opinion is this Board has made an order. And we
6 should enforce that order; otherwise all of our
7 orders are suspect to not being enforced.

8 The harness people had the opportunity
9 to go to court, seek a TRO, or whatever else they
10 wanted to do. They either didn't do it or didn't do
11 it properly. And we need to make sure that our
12 orders are enforced.

13 Otherwise, we're not a appellate body.
14 We made an order. They can't appeal it to us. They
15 appeal it to the court.

16 CHAIRMAN HARRIS: Yeah. I think that's the
17 big issue, really, where we are now.

18 You can go ahead, with your remarks, I
19 guess.

20 MR. AXELROD: Thank you. I'm Ivan Axelrod.
21 I'm an owner, a breeder of harness horses. I'm also
22 a United States Trotting Association director and
23 Chairman of District 3, which represents California.

24 Chairman Harris and Board Members, I
25 promise not to give you a lot of numbers, I think.

1 Everyone else has done that and probably confused
2 everyone here.

3 But I'm speaking about racing in
4 California. And part of my responsibilities at the
5 USTA is working with commissions, such as yours, to
6 further racing, deal with issues of licensing, and
7 promoting our sport.

8 I recognize you all have a very
9 difficult job in this trying time of racing, as you,
10 Chairman Harris, mentioned earlier -- reduced purses,
11 competition from other states, slot machines, and all
12 of that.

13 I've been a major owner and breeder in
14 California for the last 20 years. And many of you
15 have not been involved in the industry for that long
16 and don't have the history. But harness racing has
17 gone through many operators over the last 20, 25
18 years -- all of which walked away from this industry
19 for various reasons.

20 We could make a list of them; but most
21 of them, I'm sure you know who they are -- other
22 racetracks, et cetera. When the industry was about
23 to fold, Steven Bieri and Capitol Racing stepped up
24 and said, "I'll put my money up. And I'll take a
25 chance on harness racing," when everyone else had

1 walked away.

2 His efforts have brought us to where
3 we are today. He's racing at Sacramento in winter,
4 when no prior operator ever would race in the winter
5 at Sacramento. And he's turned it into a profitable
6 operating facility.

7 He's put money into a facility where
8 he only operates under short-term leases. We've
9 never had an operator that would do anything like
10 that. The paddock -- and I'm sure all of you have
11 seen over time -- was built with money; and if his
12 lease was gone, that money would be lost. But he has
13 confidence in the industry and putting his money
14 behind the operation.

15 He's dealt with all of these
16 obstacles. Primarily, there's almost a year-round
17 program now. Horsemen have some stability.

18 Yanking a license out and putting the
19 horsemen back in a position that they were in five or
20 six years ago, when they didn't know where to race,
21 may send those horsemen to all other parts of the
22 country because they have to earn a living.

23 And I think -- I don't clearly know
24 the issues of the dispute between the parties. I
25 assume it's clearly a legal issue, and probably

1 courts or a mediation or some kind of maybe a body
2 provided by the Racing Commission could facilitate or
3 mediate some resolution of those issues.

4 But to deny a license and put the
5 horsemen at tremendous risk would be very detrimental
6 in a time that horse racing in California cannot
7 afford that. Thank you.

8 MR. BLONIEN: Chairman and Members, Rod
9 Blonien, representing Los Alamitos race course. And
10 for the clerk, it's B-l-o-n-i-e-n.

11 As you heard before, you issued your
12 order on May 12 in the matter known as Capitol Racing
13 versus Los Alamitos. We went to the July meeting.

14 I came forward when you were going to
15 grant a license to Capitol and asked that they be
16 required to make payment, at which time Mr. Papiano,
17 Following my testimony, came forward; waved a
18 lawsuit; and said, "We have sued the Board. You
19 shouldn't hear this matter until our lawsuit is
20 adjudicated."

21 In November, the application for Los
22 Al was before have the Board to grant Los Al a
23 license. And someone -- I wasn't at the meeting, but
24 I was told that a representative from Capitol came
25 forward and said that they had filed for TRO to

1 preclude the Board from enforcing its order.

2 I'm not aware of a TRO having been
3 filed. But the lawsuit was, in fact, filed. And I
4 understood there's a demurrer that has been filed by
5 the attorney general that's going to be heard
6 shortly.

7 And counsel, trial counsel, that I
8 know have examined it and feel the attorney general
9 has a very strong point in pleading that Capitol
10 slept on its rights and did not timely bring, ask
11 this Board to -- for an appeal or review of its
12 order.

13 In October -- I think it was October 7
14 or 8 -- Mr. Roy Wood called all parties together in
15 his office and tried to get this matter resolved.

16 Dr. Allred was there. Mr. Bieri was
17 there. Numerous other folks were in attendance.
18 Mr. Wood put some pressure on everyone there. And
19 Dr. Allred, in the spirit of compromise, indicated he
20 would take less if we could get this matter behind
21 us.

22 We made numerous other compromises.
23 Mr. Bieri indicated that he wanted to think it over.
24 And another meeting was scheduled the following week
25 at -- before Los Alamitos.

1 Mr. Bieri was there. Dr. Allred was
2 there. Numerous other people. At the end of the
3 meeting, Mr. Bieri, as I was told -- I wasn't
4 there -- indicated that he wasn't sure he wanted to
5 pay anything and said he would get back to
6 Dr. Allred.

7 There was no further contact, no
8 further discussion.

9 Dr. Allred called Mr. Horowitz last
10 week to try and talk about this issue, see if there
11 was something that could be done. And the call was
12 not returned.

13 The question is "How much farther, how
14 much more latitude are you going to give Capitol
15 Racing before you enforce your order?"

16 The horsemen in Sacramento have been
17 overpaid. The horsemen at Los Alamitos have been
18 underpaid. Our horsemen have opportunities to run in
19 other jurisdictions where the racing purses are
20 supplemented by slot machine wagers.

21 We need this money now to maintain the
22 purse pool, to maintain the purse schedule that we
23 have set for our meet. Capitol, according to their
24 financial statement, is holding 500-and-some-thousand
25 dollars that should be paid to Los Al.

1 We would like to have that money paid
2 forthwith. The other \$2 million, after you do the
3 addition and subtraction, should be paid as soon as
4 possible. Dr. Allred is willing to work with them.

5 They don't need to write a check
6 tomorrow for 2 million. But by the end of the year,
7 we would like to be made whole for the consequences
8 of the Board's decision.

9 Now, Mr. Bieri indicated that you
10 didn't have the authority to award monetary damages.

11 Well, let me read to you Business and
12 Professions Codes Section 19440. "The Board shall
13 have all powers necessary and proper to enable it to
14 carry out fully and effectually the purposes of this
15 chapter.

16 "Responsibilities of the Board shall
17 include, but not be limited to, all of the following:
18 Adjudicating rules and regulations for the protection
19 of the public and the control of the horse racing
20 pari-mutuel wagering, adjudication of controversies
21 arising from the enforcement of those laws and
22 regulations dealing with horse racing and pari-mutuel
23 wagering."

24 And there are other things that
25 also -- but I think there's no question that you have

1 the authority. There are numerous court of appeal
2 cases that say that the Board has plenary authority
3 to do what is necessary to enforce the laws, to
4 enforce the regulations, to provide for a reasonable
5 administration of horse racing. And that's what
6 we're asking you to do.

7 Again, it's a difficult issue. But we
8 think it's time for the Board to condition their
9 license, requiring them to immediately pay the money
10 to Dr. -- to Los Alamitos race course -- the
11 500-and-some thousand that they owe, and for us to
12 receive the additional \$2 million over the course of
13 the year.

14 We would ask that their license be
15 conditioned with those items as part of the
16 conditions. We're not asking that their license be
17 denied. I think that that would be a burden on the
18 harness industry. We just want to be paid. Thank
19 you.

20 MR. BARDIS: Good morning. My name is Cristo
21 Bardis. I reside in Sacramento, California.

22 I've been -- I don't know how long
23 I've been involved with racing, but it's been 30
24 years, maybe. I have been an owner of a racetrack.
25 I've been an operator of a racetrack. I have been

1 honored to serve as a racing commissioner in the
2 State of California.

3 I have been part of a horsemen's
4 association. I've been an owner. And I've been a
5 breeder. I've done it all.

6 And the harness industry has had a
7 series of problems for a number of years. Recently I
8 wrote you a letter of things that I thought had to be
9 looked into, in the interest of racing in California.
10 And I request that you eventually do that. It's not
11 germane to what you have in front of you today.

12 I and no one -- I don't think -- in
13 this room wants to see the cessation of harness
14 racing. They would like to see it go forward. I
15 would like to see it go forward. But it has to go
16 forward on sound foundations. You can't have a
17 financially bankrupt, incapable corporation using the
18 public money to power a race meet.

19 Your current assets and liabilities
20 don't make sense. The balance sheets don't make
21 sense. Your financial statements on file with the
22 Racing Commission are a disaster.

23 But there -- and there is an answer.
24 If you don't condition this license, I think there's
25 an alternative. And it's not me.

1 The alternative is to check with Cal
2 Expo and see if they would be prepared to put on a
3 race meet. Now, I have encouraged them to do that
4 for a number of years.

5 And one of their representatives is
6 here today. And maybe he would address the Board as
7 a possibility so you would not have a disruption in
8 the event you have to take serious action. Thank
9 you.

10 MR. BADOVINAC: My name is Greg Badovinac,
11 B-a-d-o-v-i-n-a-c. I'm an individual horseplayer.
12 The issues raised are important and need to be
13 settled. And I have no position on that.

14 But I do want to recommend Capitol
15 Racing for one thing: They offer their product to
16 all three California-licensed ADW providers. They
17 offer their product to other ADW providers throughout
18 the country.

19 They are trying their best to make it
20 better for California horseplayers to bet on harness
21 racing in California and to expose our great sport
22 from our great state to other people around the
23 country. They are doing what the Board intended for
24 ADW to be two years ago, when you approved the
25 licenses.

1 When the time comes, I'm going to,
2 again, congratulate the fairs and Mr. Korby for the
3 same thing -- for allowing their product to be on all
4 three ADW services in California so that the players
5 have a real choice. Thank you.

6 MR. MINAMI: Mr. Chairman -- Mr. Chairman, for
7 the clarification for the Board itself, I'd like to
8 ask Deputy Attorney General Derry Knight to give the
9 Board a status on the current litigation filed by
10 CHHA and the status of the Board's order.

11 DEPUTY ATTORNEY GENERAL KNIGHT: Thank you.

12 Yeah. The Board's order, as you will
13 recall, was issued on May 12. There is a lawsuit
14 that was filed, challenging the Board's order. It
15 was filed -- I don't have the details with me -- but
16 it was -- in my view, it was untimely filed.

17 And as a result of that, we have filed
18 a demurrer, on behalf of the Board, challenging the
19 timeliness of the action. And I think the action
20 was, I believe, clearly filed a month or two after
21 the applicable time period that they have to file in.

22 So while there is an action pending,
23 there is no TRO that I'm aware of. Certainly we were
24 never provided notice of any request for a TRO. I'm
25 unaware of any action on their part to seek a TRO --

1 temporary restraining order.

2 So your order is still in effect.

3 There is a lawsuit pending, which would challenge
4 that law -- that -- but we haven't -- the Board has
5 filed a motion to have that action dismissed. That's
6 the status of it.

7 COMMISSIONER LICHT: Derry, didn't an attorney
8 representing Cal -- the harness people come into one
9 of our meetings and tell us that he had, in fact,
10 filed a TRO? That's my recollection.

11 DEPUTY ATTORNEY GENERAL KNIGHT: I believe
12 there was -- that's my vague recollection. That was
13 at another -- I think it was at Del Mar or somewhere
14 where I recall that. But --

15 COMMISSIONER LICHT: It appears that it wasn't
16 true -- what he told us.

17 DEPUTY ATTORNEY GENERAL KNIGHT: Certainly,
18 I'm unaware of any TRO.

19 CHAIRMAN HARRIS: Does anyone from Capitol
20 have a statement on whether they do have a TRO or
21 not?

22 MS. VAN DYKE: There is no TRO on file.

23 Joan Van Dyke for Capitol Racing. I'm
24 sorry. Joan Van Dyke, J-o-a-n V-a-n D-y-k-e.

25 COMMISSIONER LICHT: Mr. Horowitz or

1 Mr. Bieri, didn't someone on your behalf come into
2 one of our meetings and, in fact, tell us that you
3 had you filed a TRO against the Board's ruling?

4 MR. HOROWITZ: Alan Horowitz, Capitol Racing.
5 I'm aware of Neil Papiano being present at the summer
6 meeting at Del Mar, remarking that a lawsuit had been
7 filed. I'm not sure whether it had a TRO attached to
8 it.

9 MR. BIERI: Steve Bieri. I'm not an attorney.

10 CHAIRMAN HARRIS: Want to come up to the mike
11 or --

12 MR. BIERI: I'm sorry. I'm apparently one of
13 the few non-attorneys in the room. And I'm not aware
14 of that statement being made. I couldn't tell you
15 whether it was or it was not. I'd have to check with
16 the people that were there.

17 So I don't mean to be oblique. I just
18 honestly do not recall.

19 CHAIRMAN HARRIS: But you do -- I mean that
20 one of the issues -- I think that avenue was open to
21 you, and that seemed to be the more prudent way to
22 handle it, if you felt that you did, you know, not
23 want the ruling to impact your license going forward.

24 MR. BIERI: I'm not --

25 CHAIRMAN HARRIS: Yeah.

1 MR. BIERI: I'm not a technical person on
2 this. So I don't want to try to defend my own case.
3 I acquired more attorneys than I'd ever intended over
4 the past year or so with all of this going on.

5 But if that's an issue, I could get in
6 touch with people that are not here today -- didn't
7 realize this was to going to be a topic of
8 discussion -- and get it clarified for you. I just
9 don't want to make up something incorrectly.

10 MR. NEUMEISTER: My name is David Neumeister,
11 N-e-u-m-e-i-s-t-e-r. For most of the last decade, I
12 have been president of the California Harness
13 Horsemen's Association, on and off.

14 On behalf of all of our horsemen, as
15 well as myself individually, I have to say that not
16 only am I offended, insulted, and appalled by this
17 staff's recommendation, in all of the years that a
18 harness -- that a licensed application actually be
19 denied over an issue that is the direct subject of
20 litigation between our association and this Board --
21 in all of the years that I have been attending Horse
22 Racing Board meetings --

23 And generally our industry and I, in
24 particular, try to keep a relatively low profile. We
25 understand that we're the smallest industry, the

1 smallest horse racing industry in this state. We try
2 to fly under the radar when we can.

3 But to my knowledge, nobody has ever
4 recommended that a license actually be denied, much
5 less because of a subject that is in direct dispute
6 in a court between our association and this Board.

7 If you want a TRO to keep you from
8 denying this license, we'll go out and apply for it
9 tomorrow. But there's no question that the legality
10 of your order of May 12 is in direct dispute between
11 our association, Capitol Racing, and this Board.

12 Now, I -- ordinarily, it would seem
13 entirely inappropriate to me -- and I would not
14 begin to go into the merits of a case that is pending
15 between us and you. But at this point, it seems like
16 I have no choice.

17 If this Board is actually considering
18 denying an application to run a race meet because of
19 an item that's the subject of litigation between us,
20 then I think we need to talk about why that, from our
21 perspective, that order is illegal.

22 And as I understand it, the order
23 itself, which is Item 14 of your order to me, with
24 all due respect, is incomprehensible. The order says
25 that the Board directs payment of impact fees that

1 would be owing, utilizing the formulas contained in
2 the previously negotiated "Zumbrun" agreement.

3 The formula for computing impact fees
4 shall also be utilized for distribution of the
5 amounts currently held in escrow, as described in
6 Paragraph 33.

7 And Paragraph 33 refers to that escrow
8 account that was set up strictly to hold monies in
9 case a decision went against our industry. The money
10 set aside was never set aside to pay to Los Alamitos.
11 It was set aside just in case a court or this Board
12 ruled against us.

13 Now, as I read your order, that means
14 that the Board is ordering us to pay any impact fees
15 that would have been -- that would have been due
16 under the Zumbrun agreement. Now, I happen to know a
17 little bit about the Zumbrun agreement because I
18 negotiated it and I drafted most of it.

19 It was a document that was drafted in
20 1997, when Los Alamitos was not required to take our
21 signal under the law as it existed at the time.

22 And after a vicious dispute between us
23 and them, where they were actually taking harness
24 races from out of state and not taking California
25 live harness signals and we had to go out and ask

1 harness racing associations all across the country
2 not to provide the signal to them, we finally entered
3 into an agreement, again, when admittedly, the law
4 did not provide that Los Alamitos had to take our
5 signal where we paid them a fee in return for taking
6 our signal.

7 That agreement was not the Zumbrun
8 agreement. That agreement was a very informal
9 agreement that is only memorialized, as far as I
10 know, in a handwritten note by Alan Horowitz.

11 The Zumbrun agreement was entered into
12 about a year later. And there is a reference in that
13 agreement to that formula. But anybody who has ever
14 has read the Zumbrun agreement knows that every
15 condition in that agreement was a quid pro quo for
16 racing at Los Alamitos.

17 That agreement self-destructed, at the
18 very latest, when we stopped racing at Los Alamitos.
19 There is no conceivable theory -- no conceivable
20 legal theory under which an impact fee could be owed
21 by Capitol Racing by the California Harness
22 association to Los Alamitos after the Zumbrun
23 agreement expired.

24 As a matter of fact, as you all know,
25 the late Senator Maddy introduced legislation in

1 1988, that became effective in 1999, that
2 specifically states that no impact fee has to be
3 paid to anybody; that, if one association is going to
4 take another association's signal, they have to do it
5 for the prescribed 2 percent fee; and unless, for
6 whatever reason, the associations should enter into
7 some kind of voluntarily -- voluntary agreement to
8 pay an impact fee -- and I cannot imagine why any two
9 associations would do that when the law says they
10 have to take our signal -- and incidentally, when Cal
11 Expo takes the Los Alamitos signal, which we are
12 impacted by, every single night of the year, the
13 harness racing entity gets no part of that.

14 The Cal Expo fair board gets all of
15 the commission, despite the fact that the harness
16 races are impacted by the Los Alamitos signal. We're
17 not compensated for that in any way because the fair
18 gets that money.

19 So this is a truly lopsided
20 arrangement as it is, even under the Maddy agreement.

21 Now, Mr. Blonien got up today and
22 talked about this Board's plenary powers to issue
23 award -- any kind of monetary awards at all. As the
24 attorneys on this Board probably know, there are at
25 least two cases -- one of 'em by the California

1 Supreme Court -- that specifically states otherwise.

2 The most famous of those cases --
3 "Youst verus Longo" (phonetic) -- and I'm not going
4 to read the whole case to you, but I'm going to read
5 one paragraph from it, which makes it very clear,
6 after speaking about the Board's plenary powers, that
7 these specific rules and regulations of the
8 California Administrative Code demonstrates the
9 character of the Board as a regulatory and
10 disciplinary entity.

11 "The extensive regulations neither
12 express nor imply any authority to award affirmative
13 monetary relief. In fact, each section which
14 authorizes adjudication of racing violations reveals
15 the power of the Board is limited to fines,
16 penalties, or exclusions.

17 "Accordingly, the regulatory relief
18 available from the Board indicates that it lacks the
19 power to award damages to those who are injured by a
20 violation of the horse racing law.

21 "It is undisputed that the Board has
22 never awarded such affirmative relief and that
23 neither the horse racing law nor the Board
24 regulations specifically include damages as a form of
25 relief afforded by the Board."

1 That was a decision issued by the
2 California Supreme Court in 1987.

3 In 1992, a California appellate court
4 issued even stronger language referring to the Youst
5 case. In that case, the court said, it was noted
6 that nowhere in Title 4 of the California Code of
7 Regulations is the Board given authority to award
8 affirmative relief in the form of compensatory or
9 punitive tort damages.

10 The court concluded that the rules and
11 regulations contained in the California Code of
12 Regulations demonstrate that the character of the
13 Board -- demonstrate the character of the Board as a
14 regulatory and disciplinary entity.

15 The extensive regulations neither
16 expressly -- neither express nor imply any authority
17 to award affirmative monetary relief. It was
18 undisputed that the Board never awarded such
19 affirmative relief and that neither the horse racing
20 law nor the Board regulations specifically include
21 damages as a form of relief afforded by the Board.

22 It was held that the jurisdiction of
23 the Board was confined to disciplinary and regulatory
24 money.

25 And that court goes on to say that,

1 although the court expressly limited the application
2 of its holding to awards for general tort damages,
3 the court's analysis is equally applicable to the
4 case before us, which dealt with contract damages,
5 which is exactly what this Board contends that we are
6 liable for.

7 And the appellate court went on to
8 say, "Without specific language or implied
9 legislative intent, granting the CHRB the authority
10 to award damages in disputes such as presented
11 here -- we cannot judicially expand the jurisdiction
12 of the CHRB to include awards of contract damages."

13 Now, let's assume, despite the
14 language in these cases, that your award is legal;
15 that, somehow within your plenary powers, you have
16 found the power to award damages that the Supreme
17 Court and the appellate courts have said you do not
18 have authority to award.

19 Let's assume that you can award
20 damages under the Zumbrun agreement. We're willing
21 to pay them. Just remember that the Zumbrun
22 agreement expired in the Year 2000, when Los Alamitos
23 kicked us out of their race course because no racing
24 has been conducted at that race course since the Year
25 2000.

1 And to that effect, I'm going to read
2 you the language from that agreement, which
3 specifically states that "Nothing in this
4 agreement" -- I'm reading from the Zumbrun agreement
5 now -- "Nothing in this agreement is intended to or
6 shall be deemed to create any obligation on the part
7 of anyone to operate or conduct a horse racing meet
8 of any kind whatsoever at Los Alamitos.

9 "Further, nothing in this agreement is
10 intended to or shall be deemed to create any
11 obligation of the parties to pay anyone hereunder any
12 money pursuant to the terms hereof unless a live
13 harness racing meet is being conducted at Los
14 Alamitos race court -- race course.

15 "It is specifically acknowledged that,
16 if no harness racing is conducted at Los Alamitos,
17 then, during the period that there is no such harness
18 racing, LARC shall not be entitled to the
19 reimbursement of any money whatsoever and CHHA shall
20 not be entitled to an administrative fee from LARC."

21 The agreement goes on to state that
22 "LARC"-- and that means "Los Alamitos Race Course --
23 "agrees to the extent permissible under the law for
24 each year in which LARC receives payments under
25 Paragraph 6 of this agreement" -- and Paragraph 6

1 refers to what we paid them.

2 And -- but the Zumbrun agreement was
3 an agreement that we entered into, to be able to
4 continue to race at Los Alamitos. The heart of that
5 agreement was that we -- the horsemen out of the
6 purse account -- pay to Los Alamitos race course
7 \$10,000 a week.

8 So this -- the agreement goes on to
9 say that "For each year in which LARC receives
10 payments, under Paragraph 6 of this agreement, it
11 will accept the simulcast signal for all live harness
12 racing conducted in the State of California except
13 for the fall meet described in Paragraph 9-B."

14 Now, the fall meet in Paragraph 9-B
15 was a meet that led up to the Los Alamitos meet,
16 which was historically a harness racing meet. Please
17 remember that, for one thing, the Zumbrun agreement
18 could not conceivably contemplate an award of impact
19 fees to Los Alamitos for the dates that we raced at
20 Los Alamitos.

21 After all, once we stopped racing at
22 Los Alamitos, this Board awarded Los Alamitos those
23 dates. In other words, Los Alamitos is overlapping
24 us from Christmas to Easter. To ask us to pay them
25 an impact fee for dates that could never have been

1 contemplated by the Zumbrun agreement is, with all
2 due respect, an outrage.

3 But as if that's not enough, the
4 Zumbrun -- the Zumbrun agreement specifically
5 describes the fall meet and when an impact fee was
6 due under the Zumbrun agreement for that meet.

7 And the Zumbrun agreement basically
8 says that, during the fall meet, the impact fee that
9 we paid during the spring is cut in half, essentially
10 because our fall meet led up to the Los Alamitos
11 winter meet.

12 So as an incentive for us to get
13 horses ready for their meet at Los Alamitos, Los
14 Alamitos generously, at that time, cut our impact fee
15 in half. But let me read to you what the fall meet
16 is described as and why it is inconceivable that we
17 should be obligated to pay an impact fee for the fall
18 meet that we now race at Los Alamitos:

19 "For any fall race meet conducted at
20 Cal Expo immediately preceding any race meet in which
21 LARC is to receive a payment pursuant to Paragraph 6
22 of this agreement and provided it is lawful to do so
23 under the law and regulations extant at the time,
24 LARC agrees that it shall receive a fee of one half
25 of the formula utilized for the 1996 fall harness

1 racing meet.

2 "For purposes of this Paragraph 9, a
3 fall meeting shall be described to mean a 10-week
4 portion of any fall harness racing meeting conducted
5 at Cal Expo which commences after September 30 and
6 which concludes prior to a winter meet conducted at
7 Los Alamitos race course."

8 So if you don't think -- if this
9 Board, for whatever reason, thinks that the Maddy
10 bill does not supersede the Zumbrun agreement, which
11 has always been our position -- our position is that
12 we were only obligated to pay an impact fee during
13 the time that the law provided that Los Alamitos was
14 not required to take our signal.

15 It was always our position that, after
16 January 1, 1999, there was no obligation for us to
17 pay an impact fee for them because the Maddy
18 agreement -- the Maddy legislation specifically
19 provided otherwise.

20 Let's assume that's not the case.
21 Let's assume that we were still contractually
22 obligated to pay impact fees to Los Alamitos
23 throughout the duration of the Zumbrun agreement,
24 which terminated on its own terms -- it
25 self-destructs on its own terms -- when we stopped

1 racing there at the end of 2000.

2 If you deduct the race meet from the
3 winter dates and you deduct the fall meet -- the fall
4 meet, which was not followed by a race meet in 2001,
5 we owe Los Alamitos \$274,000 -- five -- 2,700 and --
6 I'm sorry -- \$274,548.66 -- if we can get this behind
7 us today, we will write them a check for that amount
8 today.

9 So when this staff recommends to you
10 that we -- that under the way they analysis --
11 analyze the numbers -- which, in truth, are
12 Dr. Allred's numbers, Los Alamitos's numbers -- that
13 we owe them \$3.3 million -- that includes racing for
14 every day that we have been overlapped by Los
15 Alamitos, including the dates they have overlapped us
16 during our traditionally unopposed dates and the fall
17 meet and fall meets that were not followed by meets
18 at Los Alamitos from Year 2000 until the end of
19 2003 -- it is unconscionable.

20 And please don't get the idea that we
21 don't want to comply with this order. We have
22 entered into negotiation after negotiation with Los
23 Alamitos, trying to settle this case.

24 If this Board is thinking about
25 putting this decision over till next month, hoping

1 that we'll get together with Los Alamitos and work
2 this out, forget it. It's not going to happen. We
3 have never come within a million dollars of being
4 able to settle this agreement.

5 And thanks to this Board's order, Los
6 Alamitos is under the impression that we owe them an
7 impact fee in perpetuity, despite the fact that the
8 Zumbrun agreement expired on its own terms three
9 years ago and despite the fact that the Maddy
10 legislation clearly states that nobody has to pay
11 anybody an impact fee.

12 I mean my impression of this order is
13 that this Board sort of thinks, under its plenary
14 powers, that we ought to pay them an impact fee
15 because, under some calculation, they're impacted to
16 some extent by our signal.

17 Well, I'm sorry. The law just doesn't
18 say that anywhere. And that essentially is our case.
19 Now, if we filed our writ of mandate too late and we
20 get blown out because we filed it too late, well,
21 then our lawyers ought to be -- they ought to be hung
22 by the neck until they're dead because we cannot lose
23 this lawsuit.

24 There is no conceivable legal theory
25 under which we owe Los Alamitos an impact fee after

1 we stopped racing there. We don't think we owe it
2 from the time the Maddy bill was passed. We're
3 willing to pay it up through the time we stopped
4 racing at Los Alamitos.

5 Please don't get the idea that we're
6 not willing to compromise this. We are. But
7 understand one thing clearly: If you take the
8 staff's recommendation and deny this license, you are
9 unquestionably putting Los Alamitos out of business.
10 If you simply take Los Alamitos's --

11 AUDIENCE MEMBER: You got it backwards.

12 CHAIRMAN HARRIS: Backwards.

13 MR. NEUMEISTER: I'm sorry.

14 CHAIRMAN HARRIS: Yeah.

15 MR. NEUMEISTER: That was wishful thinking, I
16 guess. Freudian slip.

17 If you deny their license, you are
18 putting California harness racing out of business.
19 If you take their suggestion and order us to pay Los
20 Alamitos \$3.3 million, you are also putting harness
21 racing out of business because of the resulting purse
22 cut.

23 Our horsemen would scatter to the wind
24 if we had to put cut purses to the tune of half of
25 \$3.3 million. So think very, very carefully about

1 this order.

2 Unfortunately, although I think it
3 ought to be the subject of litigation in the court,
4 even though your own administrative law judge held
5 that we owe them nothing, for whatever reason, this
6 Board has decided to take this issue by the horns.

7 If it's going to, you're going to have
8 to do it, and you're going to have to do it today.
9 If you hold it over till next month, who knows where
10 our horsemen are going to be?

11 Next month's meeting takes place --
12 what? -- a week before our next race meet's supposed
13 to start? If they even get -- if they get whiff of
14 the idea that their purses are going to be cut to the
15 tune that they'd have to be cut, because of a 3.3
16 or \$3.5 million payment to the Los Alamitos, harness
17 racing is over in the State of California.

18 That's how important this issue is. I
19 have to think this Board had no idea what kind of
20 money it was talking about or what the Zumbrun
21 agreement really said when it laid down this order.
22 It's just inconceivable to me.

23 And I cannot think -- and I am a
24 lawyer. I'm not -- I'm not -- I've never practiced
25 law before the horse racing law -- before the Horse

1 Racing Board for money. I've only acted in the
2 capacity as president of this association. But I
3 know the horse racing law pretty well.

4 There is no conceivable legal theory
5 under which we could owe Los Alamitos an impact fee
6 after we stopped racing at Los Alamitos.

7 I'm here to answer any questions if
8 anybody's got any.

9 COMMISSIONER LANDSBURG: I do have a question.

10 MR. NEUMEISTER: Yes, Mr. Landsburg.

11 COMMISSIONER LANDSBURG: The pleading that you
12 put before this Board requires, from my point of
13 view, the same kind of legal knowledge that you have.
14 So we turn to our -- we will be turning to our
15 attorney general, I'm sure, to comment on what you've
16 said since you pose it as a lawyer.

17 Where were you on May 13 or the
18 following meeting? Where were these arguments when
19 we specifically, as a Board, laid down the
20 proposition that this was needed and necessary in
21 order to achieve a settlement that has rankled and
22 hurt --

23 MR. NEUMEISTER: I would -- I would like to
24 answer --

25 COMMISSIONER LANDSBURG: -- the workings -- the

1 workings of two organizations?

2 The harness racing -- I grew up on
3 harness racing. I would love to see harness racing
4 in California. I won't look at it in terms of late-
5 coming arguments and pleadings that belong somewhere
6 else and much earlier than we have right here.

7 You are now saying that you want to
8 violate the order of the Board because you have
9 history that's gone into it. I've heard enough about
10 this history. I am not a legal expert. I don't
11 pretend to be. I am here in the interest of
12 maintaining racing in California.

13 MR. NEUMEISTER: I --

14 COMMISSIONER LANDSBURG: I would seek every
15 possible way to keep harness racing alive but not in
16 the face of now being forced to redigest legal
17 arguments that should have been made months ago.

18 MR. NEUMEISTER: Unfortunately, Mr. Landsburg,
19 I could not agree with you more. When I asked the
20 senior staff of this Board -- well, let me put it
21 this way: Even prior to that date, after the
22 administrative law judge's order was rejected by your
23 Board and we were waiting for the decision from the
24 Board, I called the senior staff of this Board and
25 asked them if they could imagine a scenario where

1 this Board would order an impact fee to be paid after
2 we stopped racing at Los Alamitos.

3 And the answer was a resounding "No."

4 I was shocked when that order came
5 down. Now, unfortunately, all I can tell you is that
6 we turned it over to our attorneys. Now, it's your
7 attorney general's position -- and I'm not sure he's
8 correct -- they have demurred to our writ of mandate.
9 That doesn't mean that the court's going to grant
10 your demurrer.

11 There's no question but that this is
12 the subject of litigation as we speak. I mean the
13 fact that there is a TRO -- I frankly don't
14 understand why you can't grant the license and see
15 what happens with the litigation.

16 Or, perhaps, let's get rid of the
17 "legislation." Appoint a committee not to -- not to
18 negotiate -- not to mediate negotiation between us
19 and Los Alamitos. But appoint a committee to decide
20 what it really takes to comply with this Board's
21 order 'cause this Board's order does not say, "Pay
22 Los Alamitos \$3.3 million."

23 As I read it, this Board's order says,
24 "Comply with the Zumbrun agreement."

25 We're willing to do that today. As I

1 interpret your order, we owe Los Alamitos \$275,000.
2 Mr. Horowitz or Mr. Bieri will write a check at this
3 meeting to get that behind us. I'm not willing to --
4 I'm not even starting to say that we won't compromise
5 this. We want to settle this. We want to get this
6 behind us.

7 But frankly, what you're doing -- it's
8 unprecedented. It's unconscionable.

9 COMMISSIONER LICHT: Mr. Neumeister, a couple
10 of minutes ago, you said, "Don't delay this until the
11 October meeting -- I mean until the February
12 meeting" --

13 MR. NEUMEISTER: What I'm saying --

14 COMMISSIONER LICHT: -- "because there's no
15 chance of a compromise." That was an exact quote.

16 MR. NEUMEISTER: No. That's not what I -- no.
17 What I said was, if what you're asking us to do is
18 work this out directly with Los Alamitos, we've tried
19 that over and over again. And it's no personal
20 reflection on the people that I deal with there.

21 I like them. It's just that we're --
22 that that -- their interpretation of this order is so
23 far from ours, they read your order as requiring an
24 impact fee from the Year 2000 to the present and
25 continuing.

1 We've had discussions, over and over
2 again, trying to come up with some number that we can
3 all live with. We've been pretty close a couple of
4 times, frankly, until your order came down.

5 The truth is this order gave Los
6 Alamitos too big a hammer in the negotiations between
7 us. As they read it, there's just no way we can get
8 close to their interpretation of it.

9 It -- you -- it's your order now. You
10 guys have to decide what it means. You can't just
11 take their number and say we owe it to them. I've
12 told you specifically why that can't be the case.
13 How can you order us to pay -- to pay monies that
14 could never have conceivably been contemplated by the
15 Zumbrun agreement?

16 Most notably the spring date -- the
17 winter dates, which were historically raced at Los
18 Alamitos and would have been impossible to be
19 contemplated and, a little more technically, the fall
20 meet, which under the Zumbrun agreement, is defined
21 as a meet that is followed --

22 COMMISSIONER LANDSBURG: You're covering ground
23 that you've already covered. This is the second time
24 past that ground.

25 MR. NEUMEISTER: Okay.

1 COMMISSIONER LANDSBURG: Can we hear from
2 others now about this?

3 MR. NEUMEISTER: Absolutely.

4 COMMISSIONER LANDSBURG: Thank you.

5 DR. ALLRED: Ed Allred, Chairman of Los
6 Alamitos.

7 My learned friend convolutes this
8 issue a lot more than it really is. The Zumbrun
9 agreement -- he's correct -- it is not -- it has no
10 effect. It is not the basis of any of this money
11 that is in dispute. The only way that it came into
12 play is that it was used as a basis of because those
13 dollar amounts that worked in the past.

14 And so that was where the negotiations
15 began, using those figures, because we had done them
16 in the past. It isn't that any provision of the
17 Zumbrun agreement that we are relying on. Not at
18 all. It's very simple what we're relying on.

19 Under the Maddy bill, we're all
20 supposed to take one another's signals. You all, I
21 think, are acquainted with the Thoroughbred solution
22 to this thing, which, of course, is in the bill.

23 The north keeps what's bet in the
24 north, and the south keeps what's bet in the south.
25 There's no way that Bay Meadows pipes its signal into

1 Hollywood Park and uses their on-track crowd and
2 keeps the bulk of money and only pays them 2 percent.
3 That's not the way it works.

4 Now, the night industry -- we had a
5 little different problem because we both share the
6 simulcast facilities around the state. And we don't
7 all run year-round. We do now, but we didn't -- but
8 the harness runs only 46 weeks or 44 weeks a year.

9 At one time, we didn't run year-round
10 either. And so that was -- we agreed we would share
11 both satellites north and south.

12 There was a provision in there -- and
13 I was very active and a very good friend of Ken
14 Maddy's and worked very closely on that bill.
15 There's a provision where the horsemen can object to
16 any signal being brought in on top of a live meet, if
17 they don't want it brought in, for whatever reasons.

18 If that cannot be resolved, then the
19 Horse Race Board has the authority to get the parties
20 together or to try to have some kind of a settlement
21 come out of this. And that is what we're relying on.

22 With the Zumbrun agreement, it was
23 only a -- the figures in that are only a basis for
24 resolving the money. And there's no damages
25 involved. It's merely an ongoing agreement to -- for

1 the impact fee. It is not a matter of money damages,
2 or he mentioned a tort liability. It has nothing to
3 do with that at all or with the possibility of
4 punitive damages.

5 So, again, it's far simpler than that.
6 It's -- our horsemen object to the signal being
7 brought in on top of a live race meet. We have
8 absolutely no problem on the days that we don't run.
9 We bring in their signal without any question. And
10 they get all the money except for 2 percent.

11 And one other thing -- when we pipe
12 our signal up there, it's true that Cal Expo itself
13 keeps the 2 percent. But we have a mitigation with
14 them. The money that's bet on our breed up there,
15 when they're racing, is an offset against the money
16 that is bet on their breed down south.

17 So it's much simpler than that. We've
18 tried very hard. We went up to Sacramento and had
19 these meetings. We had another meeting at Los
20 Alamitos a week later. We thought we were making
21 some progress. They've stonewalled it since then.

22 We're very flexible on this thing. We
23 need -- we need help in getting it resolved. But we
24 want to resolve it also. Thank you very much.

25 MR. BLONIEN: Thank you, Mr. Chairman and

1 Members. Rod Blonien, again, on behalf of Los Al.

2 I wanted to try and clear the water a
3 little bit in terms of some the remarks from Mr.
4 Neumeister. Mr. Neumeister indicated that you do not
5 have the authority to award damages. And we're not
6 really asking for damages.

7 The Youst case that he cited to you is
8 a case involving civil law tort where somebody
9 contends they were injured and they wanted the Board
10 to award damages.

11 We're not coming here as an aggrieved
12 party who said, "We have a whiplash, and we want you
13 to give us some money." We're talking about
14 enforcing your order. Let me read to you Section
15 19605.3 of the Business and Professions Code.

16 "Any dispute relating to the amount of
17 fees or charges to be paid by any party as a
18 condition of receiving the live audio-visual signal
19 from an association or fair may be appealed to the
20 Board. However, nothing in this paragraph shall be
21 construed to require the association to execute such
22 an agreement."

23 It says right here you have the power.
24 You have the power, you have the authority to award
25 fees or charges to be paid by any party. It's right

1 there in the law.

2 And in terms of the so-called Maddy
3 law, that provision indicates that Los Al or another
4 association may be required to take the signal. But
5 it further says, "Subject to the provisions of
6 19605.3," which is the section -- part of the section
7 I just read you and the section that says there may
8 be agreements between the parties relating to the
9 payment of fees.

10 Senator Maddy was aware of this
11 situation when he did the bill. And as Dr. Allred
12 indicated, the big issue wasn't really us. It was
13 the Thoroughbred industry, which is part of the same
14 section. If it's bet in the north, it stays in the
15 north. If it's bet in the south, it stays in the
16 south.

17 That's what we're asking for. In
18 fact, we're asking for less than what the current
19 Thoroughbred situation is. And, again, we would ask
20 that you conditioned their license on payment of the
21 500,000 that they're holding forthwith and enter into
22 an agreement with Dr. Allred for the payment of the
23 remaining \$2 million. Thank you.

24 MR. BIERI: Hello, again. Steve Bieri.

25 I'll be brief. I just wanted to touch

1 on a couple of things that were said a while ago.

2 We are not financially instable. We
3 have paid all of our bills since the inception of
4 this company. The financial strength behind the
5 company is more than adequate to sustain it.

6 Any questions that were raised by
7 other people that you wish to follow through on in
8 greater detail, I'd be more than pleased to be
9 available to come up and meet with any of you or your
10 senior staff and go over that.

11 The last thing in the world that
12 anybody wants is an insolvent or unstable
13 organization. And we certainly are not.

14 But I did want to, at least, clear the
15 record because they painted a picture -- it's
16 interesting how numbers can be manipulated. Or, you
17 know, with their attorney, I could find an attorney.
18 We could certainly -- we could say the opposite.

19 But I just wanted to assure you that
20 we are paying our bills. We are not insolvent. And
21 we are financially responsible.

22 As far as figuring out all of these
23 other things, I'm awfully glad to heard that Mr.
24 Allred is flexible. We are too. And we just haven't
25 seemed to have been able to make that flexibility

1 come out to an agreement yet.

2 Good luck in your deliberations. But
3 we ask you to do the right thing. Keep us racing.
4 And if he's flexible, we're flexible. And I'm sure
5 maybe there is a way to get this thing worked out.
6 It seems rather complex at this time. Thank you.

7 CHAIRMAN HARRIS: This is a difficult issue.
8 We've spent a lot of time -- but we've spent quite a
9 bit of time on it.

10 Any other comments? Do the
11 Commissioners have some comments on this?

12 COMMISSIONER MORETTI: Well, I guess I have
13 some basic comments. First of all, I believe there
14 was someone who said it -- there isn't anyone in this
15 room, I think, that wants to see harness racing
16 ceased in California.

17 It's very important. It's very
18 important to the economy in Sacramento, where I come
19 from. And to Mr. Liccardo's point, I also want you
20 to know that I'm most concerned about any possible
21 loss of jobs. That is not what we want to see.

22 But I think that, regardless of
23 whether or not the argument should be made or should
24 not be made in a court of law and outside of the
25 jurisdiction of this Board, our charge is to maintain

1 the integrity of horse racing in California.

2 And to my mind, that means that we
3 have every right and duty to look at the business
4 practices of the companies that are involved in
5 racing in California. Corporate accountability is
6 something that is very important to the integrity of
7 racing.

8 And so I just wanted to make that
9 comment before we move on.

10 CHAIRMAN HARRIS: Any additional comments from
11 the Commissioners?

12 COMMISSIONER LANDSBURG: Is there an
13 alternative proposal of management of harness racing?
14 The disappearance of harness racing is a painful and
15 emotional decision.

16 Is there another way to approach this
17 without killing harness racing in this State?

18 I ask the audience and those
19 interested to help us find that way and find it, not
20 next week and not next year and not in the next ten
21 days, but to find it now because we're up against the
22 rulings that this Board has got to live by.

23 MR. BARDIS: Mr. Chairman, Members of the
24 Board, if I might respond, I think there is a way.
25 And that is to bring this matter back to the Board

1 but simultaneously maybe bring it back audio -- I'm
2 sorry.

3 Simultaneously bring a application
4 back to the Board, possibly from Cal Expo itself, to
5 put on the race meet. Then you'll have a backup
6 position if these things are not resolved. And they
7 could step right into their shoes. You may have a
8 week delay, a day delay, or whatever.

9 I have been in the business. I have
10 run racetracks. I have run Cal Expo racing. I would
11 be happy to volunteer my services on an interim basis
12 to help them out if they need it. I don't even think
13 they need it.

14 Dave Elliott's in this audience. And
15 he's put on race meets. And he is from Cal Expo --
16 Cal Exposition fair board. He is capable of putting
17 on this meet, if that had to happen.

18 I hope you don't get to a point where
19 you have to stop racing in California. And I do
20 think you have an alternative. Thank you.

21 (Brief interruption.)

22 COMMISSIONER LANDSBURG: Mr. Horowitz, I'm
23 sorry. We just had --

24 MR. HOROWITZ: Yeah. Thank you, Alan
25 Horowitz. Capitol Racing.

1 I think that movement toward a
2 solution might be if this Board were to appoint a
3 committee with the sole intent of addressing this and
4 addressing the specifics of the fees that we may or
5 may not owe.

6 We essentially are in a position, as
7 Mr. Neumeister has already spoken, where there's an
8 impasse. There's an awful lot of dollars between the
9 two parties. And you're getting sucked into an issue
10 that's been before the Board, at least the staff and
11 the two breeds in the industry, for many, many years.

12 This goes back ten years. This goes
13 back even longer than ten years -- the disputes about
14 harness racing at Los Alamitos. So there's a lot of
15 emotion on our side and on Los Al's side that is
16 spilling over. And you're being asked to have to
17 deal with it.

18 You did actually take a cram course in
19 a lot of things today that the staff has been dealing
20 with but not the individual Board Members.

21 To get back to the solution: We don't
22 want to see the cessation of harness racing in
23 California. We believe that Capitol Racing is a bona
24 fide adequate group. It has the integrity.

25 The overpayments that you speak --

1 that were spoken about are not overpayments if one
2 looks at the "612" offset monies that Los Al is
3 holding because, if they're holding that money, which
4 they indicated today was a million three, that
5 million three is purse money.

6 That's not commission money to the
7 harness horse -- Harness Horse Racing Association.
8 That's money for horsemen's purses. So if that money
9 were to come up to Sacramento, we've been paying out
10 purses based on the assumption that that money, under
11 statute, is due to the harness horsemen's purse
12 account -- period.

13 And because of that, that overpayment
14 looks overblown. Okay? You reduce the extent of the
15 overpayment by a million three and -- many
16 associations around the state have 600, \$700,000 in
17 overpayments.

18 From the standpoint of just -- I just
19 want to mention, too, because that really wasn't
20 addressed the way -- the reason that that accumulates
21 is because we have a philosophy with Capitol. When
22 we set a purse schedule at the beginning of a race
23 meet, we like to keep it for the period of time so
24 that horsemen racing at the meet know, whenever they
25 get their horses ready, they can race their horses

1 for the same money.

2 The inconsistency of raising and
3 lowering purses, based on every week's fluctuation in
4 handle, is not consistent with the way we view the
5 most effective way to run our business and to run the
6 industry here in harness racing.

7 Back to the solution: I think, if the
8 Board approves the license application and the Board
9 appoints two, three -- I don't know what the
10 customary number of commissioners are -- and those
11 commissioners deal with all of these issues, very
12 complex, that we've been hearing, hearing with --
13 they have the staff assist them but knowing full well
14 that there are some legal issues, there are contract
15 issues here -- and then actually filter the numbers
16 through those different time lines that are produced
17 by those legal and legislative and contract events,
18 then come up with a determination -- I, you know, I
19 think our association and the horsemen -- and I would
20 hope Los Al and their horsemen -- would live with it.

21 The problem with the Board's order is
22 that, until the staff said the association owes Los
23 Al \$3.3 million, we were living on an ALJ decision
24 that came a couple of years down the road that
25 essentially was not -- was a recommendation that was

1 not endorsed by the Board.

2 And so we sort of felt sandbagged at
3 that time. Again, if this Board appoints a committee
4 and independent -- independent of the time line for
5 harness racing, essentially deals with this issue,
6 resolves this issue, the two parties should be bound
7 to that.

8 And, you know, then we're not looking
9 at the courts. We're not looking at putting the
10 staff on the line. And, you know, my feeling is I
11 respect you people enough to know that, if you get
12 together and go over all of these things, that you
13 should be able to come up with a satisfactory
14 resolution of this thing or something that the
15 industries have to live with. Thank you.

16 COMMISSIONER LANDSBURG: Is it your suggestion,
17 Mr. Horowitz, that the Board serve as binding
18 arbitrators? 'Cause I don't think the Board will.
19 But binding arbitration might be an answer.

20 MR. HOROWITZ: You know, I've run that by Roy
21 Wood back in November at the meeting that we had at
22 the Los Alamitos golf course. I've run it by John
23 Reagan. I don't know whether -- I don't know if
24 that's the appropriate thing. But --

25 COMMISSIONER LANDSBURG: That's what you're

1 asking, in effect.

2 MR. HOROWITZ: But, you know, the good thing
3 about the Board is you people -- you lead the
4 industry. You're not some third party. You've got
5 more involvement in the industry. You know the
6 parties. You know the issues. You know you're
7 learning some of the law that's been sort of
8 convoluted here.

9 You know, in the absence of the Board,
10 that may be a better solution. But, you know, if the
11 Board would take it on, that would be great.

12 CHAIRMAN HARRIS: I think the Board is, you
13 know, positive about trying to solve it. If we could
14 solve it, we'd move on to the Mid-East crisis or
15 something, 'cause that would be easier.

16 But the issue is we've got to do --
17 the application before us today, I don't think could
18 really be approved today. But I think we want to
19 figure some way to get everybody together. But I
20 don't know if we could really compel everyone to get
21 together is the problem. Do you want to take a
22 break? Or do you want to keep going?

23 COMMISSIONER LANDSBURG: Let's take a break
24 anyway.

25 CHAIRMAN HARRIS: Alan would like to take a

1 break. So why don't we take a break for about 10
2 minutes? We'll be right back.

3 COMMISSIONER LANDSBURG: I suggest you talk to
4 each other.

5 (Break: 11:27 - 11:48 A.M.)

6 MR. MINAMI: Ladies and gentlemen, will you
7 please take your seats. We will be calling the
8 meeting to order.

9 CHAIRMAN HARRIS: Okay. We're back in
10 session. Further comments by the Board on this
11 issue?

12 COMMISSIONER LANDSBURG: The suggestion was
13 hinted that a sense of binding arbitration might
14 bring this to a solution. I would ask the Board, in
15 the event that the parties agreed to binding
16 arbitration, to withhold enactment of our ruling for
17 the 7 days during which this purported or possible
18 binding arbitration could be held.

19 So I would ask the Board if they would
20 approve such a movement; that is, my motion here is,
21 in the event the parties, before this motion is
22 passed, agreed to binding arbitration, that we would
23 move that we withhold our order for a 7-day period
24 during which this can be accomplished. If neither
25 side agrees, then we will move on.

1 That's my motion before the Board. I
2 hope it wasn't too complicated.

3 COMMISSIONER LICHT: Are you asking them to
4 agree to binding arbitration? Or are you asking us
5 to order them to binding arbitration?

6 COMMISSIONER LANDSBURG: No. I'm asking them
7 that, if they agree to binding arbitration, the Board
8 will allow a 7-day period before the enactment of its
9 order in the event binding arbitration is
10 conditioned --

11 CHAIRMAN HARRIS: Well, do we need a motion
12 for that? Or can we just see what their incentives
13 are for binding arbitration?

14 MR. NEUMEISTER: May I ask a question? When
15 you say "binding arbitration," are you talking about
16 an outside arbitrator? Or are you talking about,
17 say, two members of this board? Or have you thought
18 about that issue yet?

19 CHAIRMAN HARRIS: I think -- well, probably
20 either way. I think whichever the parties would feel
21 most comfortable with.

22 COMMISSIONER LICHT: Wouldn't we have a
23 problem if it were people from this Board, though, as
24 far as, then, if we ever had this brought back, I
25 guess those people would have to recuse themselves?

1 Or, Derry, could we do that? Or --

2 DEPUTY ATTORNEY GENERAL KNIGHT: There's a
3 couple of issues. Obviously the open-meeting issue
4 is the first thing that jumps out at me. If you've
5 got -- if you have more than two people involved,
6 you'd have a problem. You'd have to notice meetings
7 and so on.

8 You have an order outstanding. And
9 this -- the arbitration would be to reach some sort
10 of compromise related to that order.

11 COMMISSIONER LANDSBURG: I'm sorry? Relating
12 to our enforcement of the order?

13 DEPUTY ATTORNEY GENERAL KNIGHT: Your
14 enforcement of the order or interpretation or
15 whatever. I think it would be cleaner if the
16 arbitration was by a third party.

17 I think -- the more I think about it,
18 it makes -- it would make more sense to have a third
19 party involved because, if you subsequently are
20 placed in the position of seeking compliance with
21 your order, you do have a problem when you've got
22 Board Members that have been involved and perhaps
23 privy to information that they wouldn't otherwise
24 have.

25 So I think the answer to your question

1 is it probably would make more sense -- it would make
2 more sense to have a third party arbitration, if that
3 were to be the Board's direction.

4 MR. NEUMEISTER: And from the horsemen's
5 standpoint -- David Neumeister -- we would accept
6 that proposal -- from the horsemen's standpoint. I
7 can only speak for them.

8 MR. BLONIEN: Mr. Chairman, my name is Rod
9 Blonien, representing Los Alamitos Race Course.

10 We already have an order from the
11 Board. This thing was argued before this Board a
12 couple of years ago. You sent it out to the ALJ, and
13 it came back to you. You issued an order. All
14 they're trying to do is delay this thing.

15 Mr. Neumeister said that you don't get
16 the authority to award damages. If you come back
17 with an award, he'll come before you again and argue
18 that you can't grant the award.

19 Our horsemen have waited too long. We
20 respectfully request that you stay on track, enforce
21 your order, and put the conditions on their license.
22 Thank you.

23 MR. NEUMEISTER: David Neumeister. If I could
24 just respond to that, I promise you that that will
25 not be the case. Binding arbitration's binding

1 arbitration. If a third party's appointed -- a third
2 neutral party is appointed to arbitrate this, we will
3 live by that order.

4 CHAIRMAN HARRIS: Well, I guess the issue
5 that's in doubt is the quarter horse interests on the
6 part of the people that have to do -- they would have
7 to agree to the binding arbitration. And I'm not
8 sure if we've got that agreement or not.

9 Alan?

10 MR. HOROWITZ: Alan Horowitz, Capitol Racing.

11 Could I ask for a point of
12 clarification? Are we -- "we," meaning all of us --
13 is it the intent to postpone the approval of the
14 license application, which is otherwise all in order,
15 and essentially waiting for the results of the
16 binding arbitration and then coming back in another
17 month?

18 It would seem to me that, if the Board
19 would approve the license application, subject to the
20 outcome of or compliance with the binding -- the
21 results of the binding arbitration, then if, within
22 that 7-day period or whatever window you're looking
23 at, it gets done, and then the license application
24 would be in effect, it would be triggered, and it
25 would be in effect.

1 It would not necessitate coming back
2 next month, which is a week and a half before that
3 meet is to begin.

4 But by the same token, the pressure
5 would be on us because we'd still have to get that
6 license application approved, which means we still
7 have to submit to and have the binding arbitration.

8 COMMISSIONER LICHT: I think that would
9 require -- Derry, tell me if I'm wrong here -- they
10 would have to dismiss their lawsuit against the
11 Board. Otherwise, how could you arbitrate something
12 if you're -- arbitrate the amount that's due under an
13 award at the same time you're disputing whether or
14 not our award is acceptable? It's binding. I mean
15 it's impossible.

16 DEPUTY ATTORNEY GENERAL KNIGHT: Yeah. That
17 would certainly be preferable.

18 MR. HOROWITZ: The Board doesn't seem to think
19 that there is much merit to that lawsuit, anyway.
20 At least, that seems to be everyone's comment but --

21 COMMISSIONER LICHT: Well, that's the Board's
22 decision. But I mean the only way that this makes
23 any sense to me, from a legal standpoint, is you
24 would have to dismiss your lawsuit against the Board
25 and the only arbitration would be "How much money is

1 due from the harness people to the quarter horse
2 people?"

3 And that would be the sole issue for
4 the arbitration. Otherwise, there's no -- there's no
5 point to any of this.

6 MR. HOROWITZ: You mean there isn't money
7 going from the quarter horse people to the harness
8 people?

9 COMMISSIONER LICHT: Maybe. Maybe.

10 MR. NEUMEISTER: David Neumeister, again.
11 From the horsemen's standpoint, we would express for
12 our -- speaking for our horsemen, we would agree to
13 do that. We would agree to dismiss our portion of
14 that case and submit to binding arbitration by a
15 neutral arbitrator.

16 COMMISSIONER LICHT: So what we would need is
17 a dismissal of all -- all litigation with respect to
18 the Board's order and agreement from all parties that
19 there would be an arbitration that -- the arbitration
20 with the sole issue being "How much money is due to
21 the quarter horse people from the harness people?"

22 And I mean I don't know how -- if
23 that's acceptable.

24 MR. SCHIFFER: Well, Schiffer, for the
25 horsemen. And we are not willing to enter into

1 binding arbitration under any circumstances. For the
2 defined amount of money that was bet -- it's in the
3 pool; there's a formula; it's calculated; we
4 presented numbers of what the number was. We're
5 entitled to be paid that money now.

6 The harness people have never
7 presented a counter-number that I've ever seen. And
8 they've had plenty of opportunity to do that. So we
9 are unwilling to enter into binding arbitration.

10 CHAIRMAN HARRIS: Yeah. Some -- short of
11 that, there might be a possibility of some type of,
12 you know, a more formal mediation, I guess, mediation
13 talks. But some -- a lot of times, lawsuits do get
14 solved in mediation.

15 But if it's not binding, I'm not sure
16 if -- if there's no end product that we can really
17 point to at the end of that time and say, "All right,
18 now. Now, we can approve the license."

19 MR. HOROWITZ: Alan Horowitz, Capitol Racing.

20 On behalf of Capitol Racing, if the
21 Board's pleasure is to approve the license
22 application, contingent upon this 7-day window to go
23 out and get the results of -- enter into binding
24 arbitration, with the conclusion that that binding
25 arbitration will resolve this issue, we will drop

1 that lawsuit.

2 I just don't know the legalities of
3 those kinds of things in terms of what the chicken-
4 and-egg things are. But it is our hope that this
5 thing -- I mean the reason why we're looking at this
6 is this is the end-all. This is the last step. It's
7 the end of the track, the train. Harness goes on.
8 But this issue --

9 CHAIRMAN HARRIS: I'm not clear if the Board
10 can just really --

11 Derry, maybe you could answer this, as
12 far as, can the Board compel parties to enter into
13 binding arbitration?

14 DEPUTY ATTORNEY GENERAL KNIGHT: No. No.

15 MR. HOROWITZ: Oh, I didn't have that in mind.

16 DEPUTY ATTORNEY GENERAL KNIGHT: No.

17 CHAIRMAN HARRIS: Well, I mean the problem is
18 the that quarter horsemen interests apparently aren't
19 willing to enter into binding arbitration.

20 COMMISSIONER LICHT: John, could we take some
21 testimony from these jockeys who are here, even
22 though it's out of order, off the subject? Because
23 they have to leave or else, I guess, we'd have to
24 continue it to the next meeting. I don't know how
25 else we could do it.

1 CHAIRMAN HARRIS: Would that be all right?

2 DEPUTY ATTORNEY GENERAL KNIGHT: Sure.

3 CHAIRMAN HARRIS: Okay. Be a nice --

4 COMMISSIONER LICHT: Break.

5 CHAIRMAN HARRIS: -- break. Okay. We've

6 got -- let's just hold this in abeyance. We'll be

7 right back to it.

8 We do have some jockeys that are

9 impacted and concerned about this Item 2 --

10 "Discussion and action by the Board on the approval

11 of the distribution of a portion of unclaimed refund

12 monies, adjusted for inflation, to the Jockeys Guild

13 Health and Welfare Trust, pursuant to the Business

14 and Professions Code 19612.9."

15 So let's go ahead and hear from the

16 jockeys that have concerns so they can get back to

17 ride.

18 MR. REAGAN: Commissioners, John Reagan, CHRB

19 staff. Just to quickly introduce this item, as you

20 know, there is a program that was put into law

21 whereby the refunds are given to a trust that then

22 provides for the health and welfare of California

23 jockeys.

24 The structure of that currently is

25 that the TOC is the one that makes an agreement with

1 the Jockeys' Guild. And the Guild is the
2 organization that provides those benefits to the
3 California jockeys.

4 Briefly, I can tell you that, through
5 2001, the Guild was purchasing insurance -- and off
6 the shelf, so to speak, and providing these benefits.
7 Beginning in 2002, they began a self-insurance
8 program, much more complex, much more difficult to
9 get your mind wrapped around that thing sometimes.

10 And I think that has caused some
11 difficulty in providing information to people and
12 other such matters, and this is why sometimes people
13 have contacted me or are here today to express their
14 concerns about some items. So I think that's what
15 they want to address.

16 COMMISSIONER LICHT: That's a partial
17 reinsurance; right? It's not -- I mean it's
18 partially reinsured, I should say. It's not --

19 MR. REAGAN: My understanding is that -- what
20 we've been provided with, is that the Guild will
21 cover the jockeys in a self-insurance program for
22 health up to 75,000. And after that, there is a
23 overall blanket-type policy that covers anything over
24 those amounts. Yes.

25 MR. HAIRE: My name is Darrell Haire. And I'm

1 a representative of the Jockeys' Guild.

2 And Mr. Reagan is correct. There is a
3 reinsurer that covers each individual member of the
4 family for \$1 million. And the plan is working very
5 well. It's a good plan. And there's no problems
6 with it, that I'm aware of. But if there are any
7 problems, you know, I'd be glad to hear what they
8 are.

9 CHAIRMAN HARRIS: I read through the report.
10 It looked like a valid plan to me. But apparently
11 there is something in there that's --

12 MR. VAN DE KAMP: Mr. Chairman, I'm John Van
13 de Kamp, TOC.

14 Under the law, we are there to enter
15 into a contract with the Guild on this. And we
16 entered into the contract, I believe, in 2000 -- a
17 3-year contract. And I was asked, by the Guild,
18 several months ago to enter into a new contract.

19 I checked in with Mr. Reagan. And
20 there are major audit problems in getting audit
21 reports in on time. And I did not want to go forward
22 with the contract until the Board was satisfied that
23 the audit that was provided by the Guild was
24 sufficient.

25 As Mr. Reagan has indicated, they've

1 moved into a self-insurance plan. And it appears
2 that there are major questions about what they're
3 really asking for and what they're actually spending
4 in terms of payments for the costs that have been
5 incurred.

6 And I've prepared a new contract,
7 after discussing this with Mr. Reagan, that could go
8 into effect once I think the Board is satisfied and
9 Mr. Reagan is satisfied that the audit requirements
10 have been met. I've submitted that, on the 16th of
11 January, to Mr. "Rice" (phonetic) and the Jockeys'
12 Guild. We talked yesterday in a meeting.

13 And he wanted to check with his
14 attorneys. There is some variation from what they
15 had proposed and what we had proposed. And, again,
16 Mr. Reagan and I had discussed this about a week ago.

17 So that's about where we are right
18 now. The request before the Board, as I understand
19 it, is to set aside an increase, out of the unclaimed
20 refunds, that would go into the Trust, which then
21 expends money for the costs incurred by the Jockeys'
22 Guild. And it sounds to me -- Mr. Reagan, you can
23 supplement this if -- there's a recommendation that
24 the Guild wants a 15 percent adjustment.

25 Historically, what the Board has done,

1 was to increase to the benchmark for the annual
2 adjustment pretty much along the lines of the
3 "Cal-Pers" (phonetic) cost, which has increased an
4 average, I think, of 12 percent per year.

5 And so I gather what's before the
6 Board today -- you correct me, John -- is that the
7 request is being made that the money be sent to the
8 Trust with either the 12 or 15 percent, whatever the
9 Board decides is appropriate, but that, you know,
10 until we get a contract in place, that no
11 expenditures are to be made out of the Trust to the
12 Guild till we're all satisfied that we have a
13 contract that is acceptable both to Guild, to the
14 TOC, and to the Board and that adequate audit reports
15 have been made.

16 COMMISSIONER LICHT: Is that acceptable to the
17 Guild -- what Mr. Van de Kamp said?

18 MR. FISS: It is, in part. What I want the
19 Board to understand -- the Commission to understand
20 is that -- Albert Fiss, vice president of the
21 Jockeys' Guild -- is that what we're talking about, I
22 think, here is a going-forward issue, not a backwards
23 issue.

24 I think, right now, that on the table
25 for the Commission to decide or to make a motion on

1 is that the monies from 2002 be released to the
2 Jockeys' Guild.

3 CHAIRMAN HARRIS: Is that "2" or "3"?

4 MR. FISS: 2000 and --
5 2 or 3?

6 AUDIENCE MEMBER: 2.

7 MR. HAIRE: 2.

8 AUDIENCE MEMBER: 2.

9 MR. FISS: 2002.

10 MR. HAIRE: We fronted the money already.

11 MR. FISS: Exactly. Exactly.

12 MR. REAGAN: Commissioners, I can clarify that
13 a little bit. A couple of weeks ago -- perhaps ten
14 days ago; I don't recall the exact time right now --
15 but we did get the financial information for 2002 --
16 the audited financials. We looked through them.

17 And I sent an E-mail to Albert and to
18 Steve Rice. And we did tell them that the \$610,000
19 in the Trust at that time was appropriate for them to
20 draw on, to settle out the 2002 costs; that they
21 were -- they are reimbursed for 2002. They have
22 tapped out the Trust.

23 The Trust, in a sense -- I'm assuming
24 they've taken the money from the Trust that we
25 authorized. The Trust essentially right now has a

1 zero. And as we come up on settling up the 2003, for
2 which we have no financial information yet, there
3 will obviously have to be some kind of funding to
4 take care of the 2003.

5 But the information we have received
6 and the information we've reviewed -- we have
7 released the -- all the total amount in the Trust to
8 cover 2002. And based on the TOC agreement, when
9 that is done, they are entitled to a full
10 reimbursement of their expenses or they are, of
11 course, limited by what's in the Trust.

12 And that is the case this time. They
13 have -- if they've drawn on the Trust, they have in a
14 sense tapped it out. And we are done with 2002.

15 CHAIRMAN HARRIS: I don't see how they paid
16 their bills.

17 I mean, on an ongoing basis, how did
18 you get all your bills for 2003? They haven't been
19 paid?

20 MR. FISS: No. We paid them. We actually
21 subsidize the jockeys that money for the entire year
22 until we get reimbursed for that money. So it comes
23 out of our general account.

24 MR. REAGAN: No. In fact, that was a very
25 good point. We asked the Guild -- very, very much so

1 in the sense that, when we're waiting, you know, six,
2 eight, nine months for an audited report of
3 expenses, we thought, "Wow, you know, you guys would
4 want to get this quicker so you can draw the money."

5 But at this point, you know, we
6 haven't seen any speed-up in the financial
7 information. And it's in the agreement with the TOC
8 that they don't draw on the money until the financial
9 information is provided -- audited financial
10 information is provided.

11 So until such time as they can goad
12 their auditors to move a little bit quicker, we are
13 still waiting for any information about 2003. And
14 we're generally getting six months' reports. So
15 we're still kind of waiting for June, 2003, to show
16 up.

17 And we've been promised, you know,
18 they've said they'll get to it just as fast as they
19 can. And since, you know, there's no money right
20 there, maybe, you know, they'll take their time.

21 CHAIRMAN HARRIS: I'm not clear on this --

22 MR. REAGAN: Yeah.

23 CHAIRMAN HARRIS: -- uncashed tickets. If it
24 doesn't go to this use, where does it go?

25 MR. REAGAN: Good point. The unclaimed

1 refunds are held for three years as unclaimed
2 property and, after three years, would begin to
3 escheat to the State of the California to the
4 Controller's Office.

5 And in this particular case, of
6 course, because we can't assign a specific person to
7 a specific refund, it will just be held there in
8 perpetuity but certainly not going to the benefit of
9 the California industry.

10 So we are very much aware of that.
11 And we are taking care, as best we can, to keep these
12 refunds available to the jockeys.

13 CHAIRMAN HARRIS: The money you're talking
14 about -- is it both uncashed winning tickets and --

15 MR. REAGAN: No. In this particular case, for
16 this purpose, it's only uncashed refunds --

17 CHAIRMAN HARRIS: Vouchers?

18 MR. REAGAN: It's all refunds. No. If I make
19 a bet and the horse is scratched, I can get a refund
20 on my money.

21 CHAIRMAN HARRIS: Oh, I see.

22 MR. REAGAN: And every year, believe it or
23 not, you know, a million, a million and a half of
24 those refunds are not recouped. They simply fall out
25 of the system when we drop everything out of the

1 system so but also people don't claim four or \$500 --
2 or six or \$7 million in winning tickets either so --

3 MR. VAN DE KAMP: And with respect to the
4 funding, the money is held usually by the tracks and
5 then released, upon instructions, to the Fund and to
6 the Trust. And that will happen, you know, here, I
7 think, when we give directions that things are back
8 in order.

9 MR. REAGAN: Yes. John makes a good point.
10 If, at some point, you approved the fact that there
11 should be a million dollars allocated for this
12 purpose, then I would then return to Sacramento and
13 send letters to the various tracks saying, "A million
14 dollars has been allocated. Your prorated share is
15 this much. Please submit this to the Trust."

16 And we've done that now for a few
17 years. But, as John indicates, this year has been a
18 little more difficult. There's been a delay in
19 getting the TOC agreement together. And recently I
20 was contacted by the Department of Labor, the federal
21 Department of Labor. And there are a couple of
22 reports referred to as "LM-2 Reports." And they've
23 asked the Jockeys' Guild to provide those reports for
24 2021, 2002, and 2003.

25 I would think I'm probably going to

1 propose today, then, given that situation -- the TOC
2 agreement and the lack of financial information --
3 that, if you approve this allocation, you make it
4 contingent upon those items being submitted to the
5 Board as well as to the federal agency requiring them
6 and we simply put that as contingent on the approval
7 so we can pass those as quickly as possible.

8 CHAIRMAN HARRIS: Any other comments on this?

9 MR. FISS: Well, the only objection I would
10 throw up is that I think it's overstepping -- the
11 Board would be overstepping its boundaries if it
12 takes that into consideration.

13 The Department of Labor reports, while
14 we're currently completing them -- and, in fact,
15 we've filed the 2001 report; and the 2002 report will
16 be ready within the next month -- so it's really a
17 nonissue here.

18 But I think the Commission would be
19 stepping into grounds where it really doesn't have
20 any -- it should have no position.

21 MR. REAGAN: We're simply asking for copies of
22 those reports to be provided to the Board.

23 CHAIRMAN HARRIS: Is there some comments from
24 the other people?

25 MR. ATKINSON: My name is "Paul Atkinson"

1 (phonetic). I'm a jockey here in California.

2 We, as jockeys here in California,
3 have spoken amongst each other. And we have asked
4 questions about the fund. But they have a new law
5 that's a "HIPO" (phonetic) law -- something to do
6 with the insurance and they can't provide it.

7 We would like to have a committee made
8 up of jockeys elected by their peers -- for Northern
9 California, Southern California, and whatnot -- to
10 make sure that we have the best insurance that we can
11 have and to have guys that can walk in and ask
12 questions or -- or look at the information or just
13 make sure that we -- we're aware, ourselves, of what
14 actually is going on. I think that's about it.

15 COMMISSIONER LICHT: I've had some discussions
16 with some of the jockeys. And I'm in complete
17 agreement with Mr. Atkinson. I think that the Guild
18 should be making full disclosure to its members to
19 the full extent possible under the law.

20 I guess I think we should make this
21 distribution and I believe all the jockeys here are
22 in favor of it. But I think that it's important that
23 disclosure be utilized to the maximum extent so there
24 aren't any lingering questions out there.

25 CHAIRMAN HARRIS: Yeah. That seems pretty

1 evident that the Guild would want to do that.

2 Does the Guild have any problems with
3 that?

4 MR. HAIRE: Mr. Chairman, as Mr. Atkinson is
5 aware of, the Guild is putting together a committee,
6 as we speak, with three riders from Northern
7 California, three riders from Santa Anita and Los
8 Alamitos -- and Laffit Pincay's one of the honorary
9 members also.

10 So we are, as we speak -- and he's
11 aware of this -- putting together a committee of
12 riders to oversee the California health and welfare
13 plan.

14 MR. ATKINSON: I'd like to add one more thing
15 to it. With that "HIPO" law, we figure that with
16 this committee they have it, in the agreement with
17 the TOC, that every rider that participates in the
18 plan understands that this committee would be able to
19 go in and see the information and then provide it for
20 the other riders in their colonies or whatever need
21 be -- any questions that arise.

22 That would be, like, one deal to add
23 to the criteria, which is already in existence, of 50
24 mounts in California and a hundred total. Thank you.

25 CHAIRMAN HARRIS: Any other comments on this?

1 MR. FISS: Yeah. There is one caveat here
2 that needs to be understood by everybody, I guess --
3 by everybody present.

4 That is that, with regards to the
5 collect -- because we are a self-insured plan, for
6 the first \$75,000 of claims, we have the information
7 in the office with regards to individual medical
8 claims.

9 And that information is the
10 information that really can't be released,
11 irrespective of whether we form a committee or don't
12 form a committee. That information is private
13 information to the jockey and their families.

14 And it needs to be understood by both
15 your Commission and anybody on that committee that
16 we -- the "HIPO" laws are really, really restrictive
17 in that particular area, when it comes to being
18 released.

19 COMMISSIONER LICHT: Generically -- in other
20 words, Jockey A has had a \$20,000 claim --

21 MR. FISS: Absolutely.

22 COMMISSIONER LICHT: Yeah.

23 MR. FISS: Generically, you could do it,
24 without a name. Specifically, you can't.

25 COMMISSIONER LICHT: Yeah.

1 MR. REAGAN: We agree very much with that
2 point about the privacy.

3 MR. VAN DE KAMP: At the same time, we would
4 seek to ask for waivers, I think, from California
5 jockeys so that kind of information could become
6 available, but waivers would have to be obtained, I
7 think, maybe to --

8 COMMISSIONER LANDSBURG: On a limited basis,
9 obviously.

10 CHAIRMAN HARRIS: Well, let's --

11 COMMISSIONER LICHT: I move that we distribute
12 the monies, as requested by the Jockeys' Guild, in
13 full, subject to the follow-up with TOC and in accord
14 with the agreement that's necessary with TOC.

15 COMMISSIONER LANDSBURG: And producing the
16 documents that are forthcoming -- the Labor documents
17 that are required?

18 MR. REAGAN: Copies of the LM-2 reports?

19 COMMISSIONER LANDSBURG: Yes. Yes.

20 MR. VAN DE KAMP: Just to make sure that we
21 understand this, the 15 percent adjustment figure,
22 which is what they sought, as opposed to 12 percent
23 and the release of that money to the Trust, subject
24 to the Trust's release, upon approval by the Board,
25 you know, for the costs that are, I guess, approved

1 and are satisfactorily proved to Mr. Reagan. I think
2 that's the way this thing works.

3 COMMISSIONER LICHT: Okay. Now, that helped a
4 lot. Thank you.

5 MR. REAGAN: Yes. Commissioners, to be very
6 clear about that, when we move this money into the
7 Trust, it stays there until such time that they have
8 audited financial information on actual -- or the
9 costs that they have incurred for a given time frame
10 before that is reimbursed.

11 So the money stays in the Trust until
12 it is proven. And we work very well with the Guild
13 in terms of them providing information and we review
14 it and then the money is released.

15 Like I say, right now, the only issue
16 we have is the timeliness of those reports. We seem
17 to be several months behind. And given the other
18 requirements that they have -- we all know that there
19 was major changeover in the management a couple years
20 ago. So maybe they overlooked the LM-2 reports and
21 whatnot.

22 But overall, we certainly want to move
23 that money in the Trust. And we're talking right
24 now -- we're proposing that this million 16,870
25 dollars would be increased over the prior allocation

1 and so --

2 CHAIRMAN HARRIS: Is that an increase? Or
3 that's the total amount?

4 MR. REAGAN: That is the total amount after we
5 take the last allocation, increased by 15 percent, it
6 comes out a million dollars -- the first time we've
7 gone over a million dollars for this program in a
8 given year -- \$1,016,870 is what would be moved into
9 the Trust, which, as I say, essentially now, I would
10 assume, has zero dollars in it or close to it, given
11 that they've taken that money out for 2002.

12 So then, as I say, we would have a
13 million -- we have a million dollars to work with in
14 the future.

15 MR. HAIRE: Darrell Haire. I'm a
16 representative of the Jockeys' Guild. We asked for
17 15 percent the last two years, John?

18 MR. REAGAN: Actually, last year was 25. The
19 year before that was 15. We all know that the costs
20 have been kind of moving upward.

21 CHAIRMAN HARRIS: We've got a motion here. Is
22 there a --

23 COMMISSIONER MORETTI: I'll second it.

24 CHAIRMAN HARRIS: -- second?

25 Any further discussion on that.

1 COMMISSIONER BIANCO: I have a question, John.
2 About the last time we brought this up, you told me
3 that the -- we didn't know the percentage would be
4 advance deposit wagering, that these tickets that
5 people had, you know, either thrown away or lost in
6 the past -- how much would this affect any
7 percentage? You know, are we going to lose 10
8 percent of what we've normally taken in?

9 MR. REAGAN: A good point, Mr. Bianco. At
10 this point the last time we have dropped the "outs"
11 and the refund was in May of 2003. And that was for
12 the year 2002, the first year of account wagering.
13 And we didn't find a major drop in the "outs" or the
14 refunds at that point. But that was the first year
15 of account wagering, as we were ramping up.

16 We will watch very carefully this May
17 15, when we drop the next -- when we drop the outs
18 and the refunds for 2003, we will note and we will
19 inform you as to any -- what the change was, up or
20 down, on those refunds and the outs for that year and
21 try to see what effect the account wagering has.

22 COMMISSIONER BIANCO: Thank you.

23 MR. REAGAN: But for the first year, we didn't
24 see much difference -- no more than you would
25 think -- what do they call it? -- nonstatistical-

1 variation type of a thing.

2 CHAIRMAN HARRIS: Logically there should be
3 some.

4 MR. REAGAN: Eventually, there has to be.
5 Yes. Yes.

6 CHAIRMAN HARRIS: The only thing I would like
7 to see is -- I'd like to make this part of the
8 motion -- but to revisit this in a few months to get
9 a report back on how the jockeys' committees are
10 coming along.

11 I think that -- it sounds to me like
12 that would be a program that they'd want to keep
13 because I mean one of the keys of that program is
14 having the representatives understand it and be able
15 to converse with whoever's riding to know that it's
16 well run.

17 So I'd like to get a report back from
18 the jockeys in maybe 60 days or so to see what their
19 feelings are at that point.

20 MR. REAGAN: Excellent point. Also I should
21 note that the law requires that this new agreement
22 between the TOC and the Guild, when it is completed,
23 must be approved by you. So hopefully it will be on
24 the next agenda for your approval. If not, it will
25 be in March. And that may very well lead to this

1 further information that --

2 CHAIRMAN HARRIS: All in favor of the motion.

3 BOARD MEMBER VOICES: Aye.

4 CHAIRMAN HARRIS: Opposed?

5 (No audible response.)

6 CHAIRMAN HARRIS: Unanimous.

7 MR. REAGAN: Thank you.

8 CHAIRMAN HARRIS: Okay. Concluding that, we

9 should go back to 1, I guess.

10 Well, it seems like binding

11 arbitration would be a good way to resolve it. But

12 to make binding arbitration work, all the parties

13 have to agree.

14 MR. NEUMEISTER: Mr. Chairman, with regard to

15 that issue -- David Neumeister for the California

16 Harness Horsemen's Association -- with all due

17 respect, it seems to me that, at this point -- and

18 you can ask Mr. Derry about this -- the dispute, at

19 least in the Sacramento superior court, is between

20 our industry and your Board.

21 Obviously Los Alamitos is going to be

22 impacted by that decision. And they may want to

23 participate at some level in binding arbitration, but

24 they are not technically party to it. The -- your

25 order is an order for us to pay Los Alamitos some

1 amount. And the only defendant in the lawsuit in
2 Sacramento is the California Horse Racing Board.

3 So if a arbitrator were to be
4 appointed, that would be strictly between the harness
5 industry and the Horse Racing Board. Now, if Los
6 Alamitos wants some input into that decision, that's
7 one thing. But I just don't see why they have to
8 agree to binding arbitration when they're not a party
9 to this lawsuit.

10 It's this Board's order and the
11 litigation between our industry and your Board that
12 we are trying to settle. So, of course, they don't
13 want binding arbitration. They -- your order gives
14 them the best of all worlds. However, they're not a
15 party to that litigation.

16 So it seems to me, if we're willing
17 and you're willing, we can have binding arbitration,
18 and they're welcome to participate in that.

19 COMMISSIONER LICHT: I think that makes a lot
20 of sense -- what you just said. Plus it also leads
21 to more reasons why we shouldn't be the arbitrators
22 'cause, in a sense, we were parties --

23 MR. NEUMEISTER: You're a party. Yes. I
24 hadn't thought of that before. But you are exactly
25 right. And, again, from the horsemen's perspective,

1 we would agree to that. Whatever the arbitrators
2 decide, we will live by it.

3 CHAIRMAN HARRIS: Yeah. I'm not sure.

4 Mr. Knight, could you comment on if
5 that would work out? Can we enter into binding
6 arbitration on behalf of our Board?

7 DEPUTY ATTORNEY GENERAL KNIGHT: Well, the
8 the concern I have is, without the other party
9 involved -- 'cause really what you need to negotiate
10 here, what you need a resolution of, is the agreement
11 or the obligations vis-a-vis the two parties.

12 I'm not sure I agree with Roger that
13 that -- or Commissioner Licht that that would resolve
14 the problem -- just having one side in it -- because
15 it's true that Los Alamitos is not a party at this
16 point in the litigation. But the litigation is sort
17 of -- to me, it's sort of a side issue.

18 Really what's creating the problem
19 here is an outstanding order from this Board. And
20 the Board has reciprocal obligations between the two
21 parties.

22 And it would seem to me, when you cut
23 through it, this order required the parties to do
24 something. And it seems to me that, unless they're
25 all before an arbitrator, I don't know how you

1 resolve the -- really the nub issue that --

2 MR. NEUMEISTER: Again, they could be
3 witnesses. They can participate in the arbitration.
4 I just don't think they have to consent to it. The
5 issue is between us and you. That's all I'm saying.

6 MR. MINAMI: Mr. Knight, since this is the
7 Board's order, wouldn't it be within the Board's
8 authority to make that determination or interpret
9 that order to determine what is a reasonable
10 compliance with that order?

11 DEPUTY ATTORNEY GENERAL KNIGHT: Well, in
12 essence, that's what you're asking me to do -- is to
13 interpret your order.

14 MR. MINAMI: Right. And I think that's what
15 Commissioner Licht was suggesting, that is, that the
16 Board participate in determining the reasonableness
17 or what would be considered reasonable in terms of
18 compliance.

19 COMMISSIONER LICHT: Is Los Alamitos opposed
20 to that? I know the horsemen are opposed. Is the
21 track itself opposed to that idea?

22 MR. BLONIEN: Mr. Licht -- Rod Blonien on
23 behalf of Los Alamitos.

24 We're opposed also. You know, the
25 Board issued an order. They had the ability to

1 appeal. There are procedures for appeal. They
2 didn't to it in a timely fashion. We think that the
3 attorney general's going to prevail in terms of the
4 demurrer.

5 What they want to do is relitigate
6 this thing. And it really -- you know, we hate to
7 hear you entertaining this.

8 COMMISSIONER LICHT: No. I --

9 MR. BLONIEN: I mean give your order some
10 respect and enforce it.

11 COMMISSIONER LICHT: I agree with that. But
12 the number itself is something that --

13 MR. BLONIEN: Well, in terms of --

14 COMMISSIONER LICHT: -- is somewhat
15 questionable. You have an opinion what the number
16 is.

17 MR. BLONIEN: And so does your staff. And we
18 have worked with your staff. We're in complete
19 agreement in terms of what that number is.

20 COMMISSIONER LICHT: I think that the only
21 thing that's at issue is what that number is at all.
22 I mean certainly not the order itself.

23 MR. REAGAN: Commissioners, John Reagan, CHRB
24 staff.

25 You make an interesting point

1 Mr. Licht. Actually, no one even disputes the
2 calculation of the -- to the formula itself and the
3 calculation of the formula.

4 What seems to be the sticking point as
5 to the amount is what time frames that calculation
6 should be made on. Based on the April, 1996, memo
7 that was attached as part of the Zumbrun package, it
8 simply talks about, when there is overlap racing, the
9 formula will apply.

10 That was contemplated, of course, in
11 1996. But it stuck around a lot longer than anybody
12 anticipated. But in discussions with both sides, I
13 don't think anybody has a problem with the formula or
14 the calculation thereof. It is "What time frame?"

15 As you've heard today, "It doesn't
16 apply in January, February, March"; "It shouldn't
17 apply for these years" or whatever.

18 But when staff calculated it, we went
19 back to the last day that the prior settlement
20 between the two parties was made -- and that was
21 March of, let's say, March of 2000 -- because we
22 started the calculation after that meeting -- April
23 of 2000. We simply took it through the -- at
24 first -- through the date of the order in May and
25 then eventually through the end of the July meet and

1 then the meet that ended at the end of 2003.

2 So we've kept track of those numbers.

3 Like I said, no one is arguing about the formula.

4 It's the months or the years that it does or does not
5 apply to. That's where the argument seems to come
6 from.

7 And we have the calculations laid out
8 on a spreadsheet. So, once somebody decides what
9 time frames are applicable, we can simply go back and
10 add those dates up.

11 COMMISSIONER LICHT: But, Derry, what happens,
12 if, hypothetically, if the Court grants the AG's
13 demurrer? We have an order, but we don't have a
14 number. We don't have a dollar amount. So how is
15 that dollar amount determined if that were to happen?

16 DEPUTY ATTORNEY GENERAL KNIGHT: Well, if
17 there is a legitimate dispute about it, that's a very
18 good question. I mean you could obviously, you
19 know -- this might be an alternative -- to just deal
20 with the numbers.

21 I didn't realize it was just the
22 numbers that was the focus of this discussion. But
23 if it's just a matter of interpreting the order,
24 that's something else.

25 CHAIRMAN HARRIS: I don't think it's the

1 numbers. It's really the time periods those numbers
2 are in play.

3 DEPUTY ATTORNEY GENERAL KNIGHT: Yeah.

4 CHAIRMAN HARRIS: And it's also -- it's clear
5 these numbers are also going forward; that they've
6 all referenced more than just going backwards but
7 also a program going forward?

8 MR. REAGAN: That's how we've interpreted it.
9 Yes.

10 COMMISSIONER LICHT: Rod, when you say
11 "Suppose the AG is successful with this demurrer,"
12 what would you say? What happens then?

13 MR. BLONIEN: Well, I -- Dr. Allred said that,
14 if what we're talking about is not going back and
15 rehashing everything that has occurred before but
16 looking at your order and applying your order, that
17 we would agree to -- I don't want to use the word
18 "arbitrate" -- but have two Members of the Board or
19 three Members of the Board conduct a hearing -- two
20 Members of the Board conduct a hearing and go through
21 all of this.

22 COMMISSIONER LICHT: Well, that is it -- I
23 mean, as far as I'm concerned, that's the only thing
24 at issue right now --

25 MR. BLONIEN: Okay.

1 COMMISSIONER LICHT: -- "What is the actual
2 dollar amount?"

3 MR. BLONIEN: Okay. And there's precedent for
4 this. Mr. Liebau is here. He'll tell you that -- I
5 forget the year -- 1995, '97, some year -- the
6 Board -- a big issue, a big dispute up north
7 involving the two northern tracks and Alameda County
8 Fair and Solano County Fair -- conducted meetings at
9 the Hyatt hotel; heard evidence from all the parties,
10 including Senator Maddy; issued a ruling. And all
11 parties followed that ruling.

12 And if what we're talking about is
13 taking a look at your order and interpreting your
14 order in terms of the attachment to the Zumbrun
15 agreement, we would agree with that.

16 But we'd also request that you order
17 them to pay us the five-hundred-and-some-thousand
18 dollars that they're holding and do that forthwith so
19 our horsemen do not continue to suffer. And
20 hopefully we could do this in an expeditious manner
21 and then deal with whatever the additional funds
22 would be.

23 COMMISSIONER LICHT: What about -- we'd
24 discussed it would have to be a third party
25 arbitrator, I think, rather than the Board. Would

1 you not agree to that?

2 MR. BLONIEN: No. I wouldn't agree with that
3 because, again, I looked at Section 19605.3, which
4 says, "Any dispute relating to the amount of fees or
5 charges to be paid by any party as a condition of
6 receiving the live audio-visual signal from
7 association or fair may be appealed to the Board."

8 And, again, there's precedent for the
9 Board to assign a couple of members to hear the
10 evidence and decide the issue.

11 DEPUTY ATTORNEY GENERAL KNIGHT: But that's
12 the very issue that might -- that's the very issue
13 that was already appealed to the Board and that's
14 been decided by the Board. That's the very order
15 that you have before the Board that was issued in
16 May.

17 So we're just -- I mean it doesn't
18 seem like this is the place that we start that
19 process all over again.

20 COMMISSIONER LANDSBURG: The only reason for
21 even going into this consideration is probably the
22 hundreds, maybe the thousands, of people who are
23 somehow employed and involved in this process. It is
24 not the will of the Board to kill harness racing in
25 California.

1 We are looking for advisable
2 solutions. We cannot go forward on the basis of the
3 lingering doubt about whether or not this racing
4 association and Los Alamitos have rationally reached
5 some kind of agreement instead of fighting it out in
6 court battles.

7 You're dealing with horses. You're
8 dealing with the very essence of what we deal with.
9 And it seems to me that it's criminal to simply throw
10 that out because you've been negligent about your
11 lawyers. I hate the negligence. And you should be
12 condemned for that negligence.

13 I don't want to condemn, for that
14 negligence, an entire industry. But I will do so if
15 we cannot see our way clear to an immediate solution
16 to the problem, not a solution that will go on for
17 months, not a solution that is going to hang over
18 until you file another lawsuit.

19 I want -- as a Board Member, my
20 personal view is that you're sitting there on a
21 dollar issue and killing an industry for your own
22 greedy reasons.

23 And I blame both of you. I blame
24 Capitol first, and I blame Los Alamitos second; and I
25 blame horsemen who have taken an intransigent

1 attitude because it always comes back to haunt you.

2 That wheel goes round and round.

3 Can't you come to a reasonable point
4 of settlement between the two parties without having
5 to have kill -- what will absolutely be an
6 irreparable damage to the industry?

7 MR. NEUMEISTER: David Neumeister.

8 Mr. Landsburg, I couldn't agree with
9 you more. And I think that Mr. Reagan put his finger
10 on the -- exactly the problem. If the Board should
11 prevail on its demurrer, the Board is still faced
12 with what that order means.

13 And if I understand Mr. Reagan
14 correctly, all his calculations do is say that, under
15 a worst-case scenario, if we were to pay an
16 overlapping -- if we were to pay an impact fee for
17 every day we were overlapped since the Year 2000,
18 that's what the figure would be.

19 The question is "For what periods of
20 overlap do we owe an impact fee, if any?" And
21 furthermore, "Is there any obligation at all to pay
22 it prospectively?" And somebody's got to make that
23 determination. That's not decided by the order at
24 all.

25 COMMISSIONER LANDSBURG: In public forum,

1 you're offered a means to go forward. I don't know
2 if that is a negotiable means or a non-negotiable
3 means.

4 All I'm trying to do is say, "Before
5 we raise the hammer and nail trotting racing in
6 California, is there some way Capitol can take the
7 lead? Is there some way we can get to agreement --
8 that is, before the -- that is possible, that is
9 opened up by what Mr. Blonien has said?"

10 I just don't want to see us kill an
11 industry. But we're about to unless you guys can do
12 something that's positive and that will make it
13 happen.

14 MR. BIERI: Mr. Chairman, Members of the
15 Commission, Mr. Landsburg, the arbitration between us
16 and Los Alamitos, which I hadn't thought of until I
17 heard about it earlier today, is certainly something
18 that we would consider; but they won't.

19 I can understand their position. We
20 would consider arbitrating with you folks over that
21 definition and all of those terms. Obviously the
22 other people don't want that to be done.

23 I talked to Mr. Allred in the break,
24 and we certainly did not reach any agreements. But
25 we said we'd sit down -- the two of us -- and we'd

1 try to see where it was going to go.

2 But I can't tell you that there's any
3 optimism that we would come out with what is fair and
4 what is rational because, when you have one person
5 that says, "We're at, if anything, 270-some thousand
6 dollars," and you have another group that says, "We
7 can do the numbers that Mr. Reagan did, and it's 3.3
8 million," you know, is it reasonable to use Solomon's
9 wisdom and cut the baby in half and call it a million
10 six? I mean is -- what -- the "fair and reasonable"
11 is the hard thing.

12 And but we can -- we will -- we will
13 arbitrate with them. We will arbitrate with you. We
14 will try to define that number. I will personally
15 meet with Mr. Allred, as we do next week. But I
16 don't want to stand up here and say that "That's
17 going to lead to a for-sure deal."

18 But we're open to all kinds of things,
19 except the taking of that argument to the extreme
20 that John did and say, "Here. Just pay all of this
21 money," because we just don't see that in the order
22 at all.

23 COMMISSIONER LICHT: We have, I believe, three
24 out of the four parties agreeing to this binding
25 arbitration -- including the Board, four out of five;

1 right? We have harness horsemen, the harness track,
2 Los Alamitos. But we do not have the quarter horse
3 horsemen; is that correct?

4 CHAIRMAN HARRIS: I don't think Los
5 Alamitos -- do we have Los Alamitos agreed?

6 COMMISSIONER LICHT: I thought we did have
7 them agreed.

8 MR. NEUMEISTER: Steve -- Mr. Bieri just
9 brought up a very interesting proposition. If it
10 would end it today, if we could get an order today,
11 from the horsemen's perspective -- split that number
12 in half -- 1.6 million. Horsemen'll pay half of
13 that; Capitol will pay half of that, if they're
14 willing to end this thing today.

15 COMMISSIONER LICHT: I don't think that the
16 Board can enter into any kind of settlement here.
17 We're just going to make the decision. That's
18 between you guys.

19 MR. NEUMEISTER: Actually, I don't think it
20 is. It's the Board's order. If you say that
21 complies, it complies.

22 COMMISSIONER LICHT: But not on a settlement
23 basis.

24 MR. NEUMEISTER: It's just deciding what the
25 order means.

1 DEPUTY ATTORNEY GENERAL KNIGHT: The order
2 does provide for the parties to agree. So I think if
3 the parties were to agree, that would be
4 acceptable --

5 MR. NEUMEISTER: But they won't --

6 DEPUTY ATTORNEY GENERAL KNIGHT: -- and would
7 comply with what the order said.

8 MR. NEUMEISTER: They won't agree to that.

9 CHAIRMAN HARRIS: I guess what we're being
10 asked to do is reconsider our order. But to do
11 that -- I don't know if there's precedent, like in
12 the legislative process where you refer a bill back
13 up or something. But usually the Board procedure
14 would be you have somebody else that really looks at
15 it.

16 DEPUTY ATTORNEY GENERAL KNIGHT: Basically,
17 you have an order that's final. And you really don't
18 have the jurisdiction or authority to just --

19 CHAIRMAN HARRIS: Yeah. That's why I think,
20 if --

21 DEPUTY ATTORNEY GENERAL KNIGHT: -- modify
22 your order.

23 CHAIRMAN HARRIS: -- we really wanted to
24 modify our order, we really couldn't.

25 COMMISSIONER LICHT: John, I'd like to suggest

1 that the parties meet and we move this down the
2 agenda. And either they agree to binding arbitration
3 or we let the court hearing go on. If the Court
4 grants our demurrer, then it will up be up to the
5 Board to decide what the number is. And that's the
6 ends of it; right?

7 I mean if they can't -- there's
8 nothing else we can do at this point.

9 CHAIRMAN HARRIS: Okay. So we --

10 COMMISSIONER LICHT: We need all four parties
11 to agree to the arbitration.

12 Am I right?

13 DEPUTY ATTORNEY GENERAL KNIGHT: Well, if it's
14 going to be binding, yeah.

15 COMMISSIONER LICHT: Yeah.

16 CHAIRMAN HARRIS: Well, I don't know. If they
17 agree to the amount of the -- they might come out,
18 just agreeing to disagree to whatever the deal was.
19 So I'm thinking that, taking it to arbitration -- I'm
20 not sure if we can do that very quickly. I don't
21 know if we'd have to keep arbitrators just in the
22 jocks' room someplace and then come out and do it --
23 it's a long process, and it's a pretty expensive
24 process -- after --

25 COMMISSIONER LICHT: -- taking a bus away --

1 CHAIRMAN HARRIS: -- the last race or
2 something. But I think -- I don't think if we've
3 got -- does anybody feel any merit to tabling this
4 item and bringing it back up later in the meeting and
5 see if the parties can come back with any version of
6 a compromise?

7 MR. BLONIEN: Mr. Harris -- Rod Blonien,
8 again -- we're willing to go if it's the Members of
9 this Board that do the arbitration --

10 CHAIRMAN HARRIS: Oh.

11 MR. BLONIEN: -- and it's limited to taking
12 your order and interpreting it in terms of the
13 attachment to the Zumbrun agreement.

14 COMMISSIONER LANDSBURG: Is that a step
15 forward, Mr. Blonien? Is that what you're
16 recommending?

17 MR. BLONIEN: Hopefully, it's a step forward.

18 MR. SCHIFFER: Schiffer, on behalf of the
19 horsemen -- we would agree on those terms also.

20 CHAIRMAN HARRIS: And there is debate as far
21 as what the Zumbrun agreement is.

22 COMMISSIONER LICHT: John, could I suggest,
23 then, that, if we have those four -- if we have the
24 parties all meet, we'll just have 'em try to come
25 back to us with what they would see as the parameters

1 for this arbitration -- in other words, when it would
2 be, what would happen, when the money would be paid
3 if it were granted and so forth -- and come back to
4 us, rather than debating it all.

5 CHAIRMAN HARRIS: Now? When would they come
6 back? How much time?

7 COMMISSIONER LICHT: In, like, ten minutes or
8 so.

9 CHAIRMAN HARRIS: I'm not sure if they can do
10 it or not in ten minutes.

11 COMMISSIONER LANDSBURG: We're asking you to do
12 that.

13 MR. NEUMEISTER: David Neumeister. I think,
14 Mr. Licht, I think you raised the problem of using
15 Board Members to resolve the dispute in which you're
16 a party. I like the concept, but I think it's asking
17 for trouble. I mean the litigation is between us and
18 you. And --

19 COMMISSIONER LICHT: You're going to consider
20 dismissing that --

21 MR. NEUMEISTER: -- you're going to arbitrate
22 it?

23 COMMISSIONER LICHT: You would -- that would
24 be required -- you dismissing the litigation, with
25 prejudice, before this ever started.

1 MR. NEUMEISTER: Okay. Then, if that were the
2 case, I'd need a few -- I'd need some clarification
3 as to what Mr. Blonien means when he says it only
4 deals with what that memorandum means. If what he
5 means is, is what's going to be decided --

6 COMMISSIONER LANDSBURG: Why don't you decide
7 that without us --

8 MR. NEUMEISTER: Okay.

9 COMMISSIONER LANDSBURG: -- now?

10 MR. NEUMEISTER: Okay.

11 COMMISSIONER LANDSBURG: Don't give us your
12 conditions. Give it to them. Come back with an
13 agreement. There's a room next door in which you can
14 discuss it.

15 CHAIRMAN HARRIS: We'll table this. But we'll
16 bring it up --

17 COMMISSIONER LANDSBURG: At the end of the
18 meeting.

19 CHAIRMAN HARRIS: -- at the end of the
20 meeting.

21 Okay. Let's get on to something less
22 controversial. Security, Ad Hoc Committee on
23 Security?

24 COMMISSIONER LICHT: Security's usually the
25 most controversial thing. So we kind of laid the

1 foundation here.

2 Well, we started this Ad Hoc Security
3 Committee. We've met twice. It's had tremendous
4 industry support. We have the CTT and the TOC and
5 the CHRB, to use all the initials involved.

6 And we also have very good support
7 from all the tracks and including the tracks have
8 been willing to provide us with people who are expert
9 in the field of security as well as outside people
10 who are owners and trainers in the industry who have
11 helped.

12 As a result of that, we've had two
13 full committee meetings and several subcommittee
14 meetings. And we've come to, I think, some good
15 conclusions. Mike Marten has been very active on the
16 backside, asking people what's going on and trying to
17 filter information to us. And the whole
18 investigative staff from Mike Kilpack and all his
19 people have helped us.

20 What we're looking at primarily is
21 cameras. We're trying to determine whether or not
22 cameras are an acceptable and useful tool in backside
23 security and surveillance. We're looking at that.
24 What we've learned is that cameras range from
25 hundred-dollar cameras that you can buy through spam

1 on the internet to very, very sophisticated camera
2 systems that cost thousands of dollars.

3 And we're going to have demonstrations
4 for us regarding the viability of those systems.

5 We've discussed enforcing certain
6 regulations that are already existing, such as the
7 "In-Today" rule, where yellow signs need to be posted
8 on the stalls having investigators and the track and
9 state vets checking those to make sure that they're
10 in place.

11 The "5-hour" rule being that, when
12 horses ship in from other tracks, they must be on the
13 grounds in 5 -- within 5 hours of -- greater than 5
14 hours before the race. That's another rule that's
15 going to be strictly enforced, if it hadn't been
16 before.

17 The most important thing that I think
18 that we've accomplished is encouraging our
19 investigators to really making backside security
20 their highest priority. We know they're inundated.
21 We all know that the State is suffering from
22 tremendous financial problems.

23 But it appears that the industry feels
24 that, first and foremost by far, the investigators'
25 duty is to look out for what's going on in the

1 backside with the horses. We know that there's
2 criminal activity going on in the backside.

3 We know that there's even criminal
4 activity with our licensees on the front side and
5 that the investigators have to spend some time on
6 those activities. But we're trying to reprioritize
7 the time to make this their Number 1 priority.

8 Being highly visible, highly trained,
9 and making people feel that there is a deterrent out
10 there to illegal drug use is really important to us.

11 We're talking about freezing some
12 samples for long periods of time so that we can use
13 it to look back at it, if we see statistical
14 aberrations. We've all agreed that -- the committee,
15 as a whole, has difference of opinions as to whether
16 or not illegal activities are going on in the
17 backside. But a hundred percent of us agree that
18 there is a perception that there are problems back
19 there.

20 And that's enough to cause us to
21 motivate our forces and make sure we can do whatever
22 we can do to deter or quell that perception. I think
23 that we were getting support.

24 I think that we're trying to turn
25 around the backside itself as far as so that people

1 who work for the -- who are licensees aren't shooting
2 the industry in the foot so that, instead of
3 complaining about what's going on, they're coming
4 forward and working with us to try to alleviate this
5 perception.

6 There's some interesting problems out
7 there. Just to give you one that we're looking at,
8 there's a rule that -- I think it's 1844.5 -- that
9 says something about the only thing that can be given
10 to a horse on race day are food and water.

11 And it doesn't say, "give it to a
12 horse." It says -- I forgot the word -- like, "apply
13 to the horse" or something. So we want to clean up
14 some of these rules 'cause a lot of trainers use
15 different mouthwash and things and they've been --
16 and the question is, "Is that legal? Or is it not
17 legal?"

18 And I think it's up to the Board to
19 set forth a rule and make a clear rule as to what's
20 legal and what's illegal so that we don't have any
21 ambiguity in that regard.

22 I know there are some people here in
23 the audience who participated in -- on the committee
24 as well as Commissioner Bianco. I don't know if
25 anybody else has anything to add.

1 CHAIRMAN HARRIS: Any comments from the
2 audience? I think it's very good committee that --
3 that we've got it going. It's something we've always
4 been concerned about. And I think it's something we
5 are working on now that will have a good outcome.

6 I appreciate everyone's cooperation
7 and particularly all the excellent work that
8 Commissioner Licht has done on it.

9 COMMISSIONER LANDSBURG: We're actually
10 breaking new ground. I can't think of any other
11 place that's gone the way that we in California are
12 going.

13 CHAIRMAN HARRIS: I think one thing we need to
14 look at is an administrative --

15 COMMISSIONER LICHT: -- administrative --

16 CHAIRMAN HARRIS: We obviously have got to do
17 due diligence for different things, for it to stand
18 up. But when we look at our investigators, we see
19 that there are paperwork-reduction type things that
20 we need to take a look at to give them more time out
21 there to look at horses.

22 COMMISSIONER LICHT: Well, that's a word. In
23 other words, that's a very complicated issue. If
24 somebody uses a dose syringe just like a squirt gun
25 and squirts a horse with mouthwash in the mouth with

1 some substance prior to a race, does that violate the
2 rule? And that's a real difficult subject.

3 CHAIRMAN HARRIS: Yeah. I think we need to --

4 COMMISSIONER LICHT: I think, if we wanted to,
5 maybe we should change the rule so it's clear or we
6 should change the rule so it's at least clear that
7 you can't do it.

8 CHAIRMAN HARRIS: Or we can enforce the
9 rule --

10 MS. HEADLEY: Are you going to define a
11 "mouthwash"?

12 COMMISSIONER LICHT: Would you state your
13 name, please.

14 MS. HEADLEY: Aase Headley. And my
15 understanding is that the only thing that could be
16 used, other than Lasix, on race day was water. And I
17 think that you're defeating the purpose of your
18 surveillance and your cameras if you could have a
19 commercial syringe because those things can be
20 tampered with.

21 And I really don't see -- one of the
22 things that was shown to us or one of the things that
23 was used as mouthwash actually wasn't a mouthwash.
24 It was a cough syrup which contained seven different
25 ingredients. And it had warnings on it -- "Keep out

1 of reach of children" and "Not to be used for animals
2 or human consumption."

3 So obviously it wasn't the same as
4 water. And I think that needs to be addressed
5 because it's a question among horsemen.

6 A lot of people are very concerned
7 about this -- exactly what is -- and I think that,
8 really, water -- which the other -- there were three
9 trainers -- I was the only owner, I think -- and all
10 the trainers agreed that water was sufficient for a
11 mouthwash.

12 COMMISSIONER LICHT: I think you're right.
13 But I think it's something we need to look at --

14 MS. HEADLEY: Right.

15 COMMISSIONER LICHT: -- with the rules to make
16 sure that it's enforceable. The word "administer,"
17 to me, is very vague. And so what you're saying is
18 clear -- "syringe" -- it's not the syringe that we
19 think about with a needle on the end of it.

20 MS. HEADLEY: No. No.

21 COMMISSIONER LICHT: It's, like, a squirt gun.

22 MS. HEADLEY: Yes. It could be anything.

23 CHAIRMAN HARRIS: I agree that our
24 investigators need to understand what we need to do.
25 Any other comments on security?

1 Let's keep moving along here to
2 Advance Deposit Wager.

3 MR. REAGAN: Yes. Commissioners, John Reagan.
4 As indicated in the staff package, we had just over
5 \$315 million last year in account wagering. We have
6 provided the chart that -- you have a color chart up
7 on your desk. There's a noncolor chart in the
8 package.

9 The top line, of course, is the grand
10 total, month by month. And then, underneath, you
11 have the three different hubs. You see the interplay
12 throughout the year as each hub does -- takes care of
13 their business.

14 And also, for the interest of -- a lot
15 of people had a lot of questions about this -- we did
16 include the CHRIMS report for the entire year -- all
17 posts, all hubs, all tracks, all breeds.

18 What this is -- it shows you what was
19 processed through the California ADW. And like I
20 say, of the \$315 million, the hub fees were about \$14
21 million, the purses just a little under 14 million,
22 and the tracks just a little bit over 14 million. So
23 they seem to be the big winners there.

24 But those are the numbers. And if you
25 have any questions, we'll try to follow up on them

1 for you.

2 CHAIRMAN HARRIS: Any comments on this report?

3 COMMISSIONER LANDSBURG: Not that I haven't
4 made before, John. I think --

5 CHAIRMAN HARRIS: Yeah.

6 I think that's been discussed in our
7 pari-mutuel committee. I think, if you could just
8 limit it to a few minutes, if you could make your
9 point.

10 MR. "BAUMANN": Thank you very much, Chairman
11 Harris. My comments will not be --

12 CHAIRMAN HARRIS: Say your name.

13 MR. "BAUMANN": Yeah. It's "Aaron Baumann"
14 (phonetic).

15 Good afternoon, Commissioners of the
16 Board and Chairman Harris. Thank you for allowing me
17 the opportunity to be heard. As I stated, my name is
18 Aaron Baumann. And I am standing before you,
19 speaking to you today as a concerned and frustrated
20 California horse owner, as a passionate fan of
21 California racing, and as a tax-paying resident of
22 the State of California.

23 I am 26 years old, and I represent the
24 next generation of our beloved industry. I certainly
25 hope that it is not the last.

1 I'd like to talk to you, not about the
2 report that was just administered by Mr. Reagan, but
3 rather the topic of distribution of ADW operators in
4 California. This issue is imminent and important.
5 And I appreciate your understanding in giving me a
6 few moments.

7 The CHRB is responsible for issuing
8 all licenses relevant to the horse racing industry in
9 California. The CHRB first entertained applications
10 for licenses for companies to conduct ADW in
11 California at its Board meeting on January 24, 2002,
12 almost two years exactly from the date of this
13 meeting.

14 Most of the current Commissioners on
15 the Board were also Members of the Board at that
16 time.

17 Of the Board Members who spoke during
18 discussion of whether or not to issue licenses to
19 certain companies, the primary topic of concern
20 expressed was the notion of television distribution.
21 I happened to be present at that meeting. But to
22 avoid any misinformation, I will cite to the 1-24-02
23 transcript.

24 Please allow me to quote.

25 Chairman Alan Landsburg stated that,

1 prior to this discussion of whether or not to issue
2 licenses -- quote -- "The promise of ADW is the
3 possibility that racing will finally have the means
4 to pursue a new audience through mass media -- in the
5 mass media presentation of our product. It should
6 not be haphazard. It should not be hit and miss. It
7 cannot be given lip service and then not delivered."

8 Inherent in the power to issue
9 licenses is to the power to deny, suspend, or revoke
10 licenses, which is specifically delineated in Rule
11 1405 of the CHRB which states -- quote -- "Violation
12 of any provision of this division, whether or not
13 penalty is fixed therein, is punishable, in the
14 discretion of the Board, by revocation or suspension
15 of any licenses" -- end quote.

16 Also inherent in the Board's powers,
17 as they relate to the issuance of licenses -- it's
18 the responsibility of the Board to supervise and
19 monitor the licenses that they issue because these
20 licenses are not unconditional.

21 If a person or entity abuses,
22 exploits, or utilizes their license in a way that is
23 dangerous or detrimental to the horse racing
24 industry, it is the duty of the CHRB to regulate the
25 misuse of that license and to respond accordingly.

1 In a moment, I will provide you with
2 facts related to Magna's distribution and channel,
3 which will explain why it's clear that Magna
4 Entertainment Corporation has misused their license
5 to operate ADW.

6 A license, by definition, is a
7 privilege, not a right. This is not about business
8 decisions. This is about protecting our industry and
9 the people involved in it.

10 I acknowledge the difficult task of
11 regulating companies like Magna, who really want no
12 regulation. But when they're operating under a
13 license issued by the CHRB and that license
14 translates into a negative impact for California
15 horse racing, then the time has come for the CHRB to
16 utilize their power and discretion.

17 While Magna would like to convince the
18 Board that they are entitled to the license,
19 regardless of their performance, the CHRB has a duty
20 to protect their industry's best interests.

21 As Ms. Moretti alluded to earlier, the
22 charge of the CHRB is to protect the dignity and the
23 integrity of our industry. And sometimes that
24 involves taking a closer look at business practices
25 of the companies involved.

1 According to the mission statement of
2 the California Horse Racing Board -- quote -- "The
3 purpose of the CHRB is to regulate pari-mutuel
4 wagering for the protection of the wagering public,
5 to promote horse racing and breeding industry, and to
6 maximize State of California tax revenues" -- end
7 quote.

8 It is my concern that the Board has
9 confused their support of free enterprise with their
10 duty to regulate.

11 As such, there is no possible way that
12 the members of the CHRB can argue that the recent
13 policies and the decisions adopted by Magna in
14 relation to their distribution signals and wagering
15 platform are -- quote -- "What is best interests --
16 what is in the best interests of the wagering public
17 or promoting horse racing and breeding industry or
18 maximizing State of California tax revenues."

19 By clearly failing to achieve
20 beneficial distribution or handle, Xpress Bet has not
21 satisfied the conditions originally set forth by the
22 CHRB when they issued a license to Magna for the
23 purpose of ADW two years ago.

24 Again, referring to the 1-24-02
25 meeting, John Van de Kamp, the president of the TOC

1 stated -- quote -- "The TOC has approached all three
2 of the entities who will be here this morning, that
3 we would price each entity based on what we thought
4 their level of distribution was."

5 Continued quote from Mr. Van de
6 Kamp -- "I mean, if you remember the movie Jerry
7 McGuire -- the quote 'Show me the money' -- the TOC
8 is saying, 'Show us the distribution,' because we
9 fully agree that the distribution is king here. And
10 it has to be broad."

11 I know that Mr. Van de Kamp is in the
12 audience today. So I would be interested if the
13 TOC's position has changed and they are no longer
14 interested in the distribution of Magna.

15 Chairman Landsburg continued --
16 quote -- "Unless we have media exposure that will
17 bring the excitement of racing to a new generation,
18 we should not go forward."

19 Mr. Landsburg posed the question to
20 Magna and would like to know what their distribution
21 signal would be.

22 For the sake of expediting some
23 things, Magna made a bunch of promises; talked about
24 how the primary source of their distribution at that
25 time was their internet wagering platform, live

1 videostreaming on their internet; that they had a
2 Meadows racing channel which was distributed to
3 650,000 homes in Western Pennsylvania on analogue
4 cable.

5 They also talked about the fact that
6 same show was on Direct TV, that they had a daily
7 horse racing program that aired on Fox sports, and
8 that they were also in negotiations with a private
9 satellite horse racing service being launched by
10 "Robert Communications" (phonetic) in which they
11 would have two channels of live race horsing and one
12 live "aud" (phonetic) channel.

13 They also stated that they had, at
14 that time were actively negotiating cable and
15 satellite deals across the U.S., with their initial
16 focus being California's MEC channel. Ladies and
17 gentlemen, may I remind you that this was said two
18 years ago? The primary source of the distribution
19 then was their live internet videostreaming, and
20 their primary source of distribution today is still
21 live internet videostreaming.

22 The MEC racing channel, to my
23 knowledge -- well, not to my knowledge -- is either
24 defunct or has no distribution in California. The
25 Santa Anita live television show is also defunct.

1 Magna has no distribution on either
2 Dish Network or Direct TV. And the program that was
3 airing on weekends on local Channel KDOC has also
4 been abandoned by MEC.

5 As for their private satellite horse
6 racing service, it's my understanding that Magna's
7 Horse Racing Station HRV TV is on some obsolete
8 private satellite system but it requires subscribers
9 to pay \$400 just to get the setup and an additional
10 \$100 per month to get those stations.

11 In addition, I personally am unaware
12 of the three channels on "NUCO" (phonetic) TV that
13 Magna promised two years ago; whereas two years ago,
14 the CHRB put their faith in Magna to achieve massive
15 television distribution, Magna has, in fact, gone the
16 opposite direction.

17 Two years ago, I can understand how
18 the Board would be enamored by their promises and
19 enticed to grant them a license, putting their faith
20 in them. But they haven't proven anything to be
21 worthy of that license two years later.

22 To make matters worse, Magna has now
23 required individuals, who wish to access live
24 videostreaming of races from Magna racetracks, to pay
25 a \$4.99 fee.

1 CHAIRMAN HARRIS: Aaron, we're running pretty
2 late on time here. I know this concerns people. And
3 this is something that Mr. Landsburg has held
4 hearings on mutuel wagering.

5 But I think it would be better to
6 refer this to the Pari-Mutuel Wagering Committee and
7 let them really take a look at it 'cause I think
8 this -- I wanted to go ahead and get the -- some of
9 your concepts out under this.

10 But I think if we really need to get
11 into new type business, it needs to be on the agenda.

12 COMMISSIONER LANDSBURG: I think it's
13 appropriate you spoke on it. And I know where you're
14 going. I've been there for the last ten months. The
15 Pari-Mutuel Committee is the place where this should
16 be heard. And I would like you to do it all over
17 again for that because those are the people who do
18 it.

19 At this moment in time, there are two
20 statements that have been made before the Pari-Mutuel
21 Committee which you should be aware of. Number 1 is
22 a change in the licensing regulation that we have
23 recommended.

24 And it is now being put through a
25 process that would make all signals -- that track

1 licenses would be based upon on whether or not their
2 signal was made available to any and all licensed ADW
3 providers, which would uncomplicate what you are
4 aiming at.

5 And secondly, all of the horsemen's
6 agreements, by a representative of TOC, have been
7 declared a new ball game -- I'm not using an exact
8 quote -- but a new ball game next year because the
9 horsemen's agreement is the key to ADW survival in
10 this area.

11 The horsemen's agreement runs through
12 TOC; and they have said, "None of the old rules
13 apply."

14 So we are aware of what you're saying.
15 We are pleased. I am personally pleased to hear it
16 being said by someone other than me. And I would ask
17 you to return to the next scheduled Pari-Mutuel
18 Meeting, whether I'm there or not, that will be
19 carried on.

20 And that's the committee that has to
21 make the recommendation to the Board for the
22 direction in the area in which you are most
23 concerned. It is not an area of disagreement that
24 you have, at least, with this Member of the Board and
25 others I've spoken to.

1 MR. "BAUMANN": Thank you very much, Mr.
2 Landsburg.

3 Speaking on the horsemen's behalf, as
4 a horsemen myself, being that I think a recent report
5 indicates that Santa Anita's all-purpose handle at
6 this point in the meet is down 16 percent, purse
7 reduction's imminent and inevitable in the near
8 future, I think this is a problem that needs to be
9 addressed with some relative expediency and may be
10 worthy of discussion amongst the Board in a meeting
11 such as this.

12 And I don't know if necessarily -- I'd
13 be more than happy to speak in front of the
14 Pari-Mutuel Committee -- but I think it's something
15 that the Board needs to address on their own, take
16 action on their own, being that they were the ones
17 that issued the license originally on the basis of
18 distribution.

19 Thank you for your time. I appreciate
20 it.

21 COMMISSIONER LANDSBURG: Thank you.

22 CHAIRMAN HARRIS: Thank you. Yes. We want
23 the staff report on the race meetings.

24 (Brief interruption.)

25 MR. REAGAN: Commissioners, John Reagan, CHRB

1 staff. We have three end-of-meet reports for you
2 included in this package. The fall meet at Hollywood
3 Park, the full year for Golden Gate, and the full
4 year for Bay Meadows.

5 Interesting numbers in that we see on-
6 track and off-track down several percentage points.
7 The total handle, of course, in one case down 4
8 percent, down 1-and-a-half percent, and down less
9 than 1 percent.

10 So we do find that ADW may be having
11 an impact but, once again, perhaps bringing the total
12 handle close to a push. But we're still watching it
13 to see the exact differences. We are concerned about
14 the on-track and off-track handles, but we'll
15 continue to monitor.

16 CHAIRMAN HARRIS: Any comments on the reports?

17 The only concern that I have is it's
18 just -- I mean it's like a patient that's not doing
19 well. Is there, you know, a diagnostic test we can
20 do? Or is there anything we can do to make things
21 better? Or are we just figuring that "Well, we'll do
22 it the same way we did it last year. And
23 miraculously it might get a little bit better"?

24 Or hopefully the tracks, when they
25 come to us with their license application, will come

1 up with some ideas of why they think that they can
2 reverse these trends.

3 I'm not sure, too, if they -- if
4 really, through our application process, we're
5 assessing enough how much promotion that they're
6 doing or how -- you know, if they really have a way
7 to serve their customers better or not, you know. Is
8 there some way that these trends can be reversed?

9 'Cause I mean it's inevitable, if they
10 keep going down to these levels, where will it end
11 out? But I mean, you know, it's down very low.

12 MR. REAGAN: Yes, sir.

13 CHAIRMAN HARRIS: Okay. Anything else?

14 Let's go move on to the Medication
15 Committee report. Dr. Jensen, would you like to just
16 briefly give us that?

17 DR. JENSEN: Dr. Ron Jensen, Equine Medical
18 Director for the California Horse Racing Board.

19 Yesterday the Medication Committee
20 met. And the items that were discussed was, first of
21 all, the proposal to conduct a nonregulatory survey
22 on the prevalence of the use of alkalizing agents,
23 more commonly known as "milkshakes," to -- in an
24 attempt to enhance performance.

25 And without going into great detail of

1 the matter, it was felt by the committee, I believe,
2 and by those present that such a survey would be a
3 useful tool to determine whether the rumors of the
4 illicit use of these alkalizing agents --
5 milkshakes -- were true or whether they were not.

6 So the idea to develop a survey to
7 determine these numbers was agreed upon. And
8 probably as important as anything, because of the
9 current state of the State's finances, there's no
10 State money available to do this type of a survey.

11 And fortunately through the generosity
12 of a donor who wished to remain anonymous and through
13 Oak Tree Association, there were funds made available
14 to conduct these surveys.

15 The logistics of the survey and the
16 exact details are yet to be worked out. But it looks
17 like that will be a go.

18 CHAIRMAN HARRIS: This survey would be done in
19 a very confidential basis where no one would know
20 what -- I mean it was decided, if it was done, I
21 think, prerace blood testing of horses and every
22 horse in a given race would be tested. But no one
23 would know which race you were going to pick until,
24 you know, the horses got to the receiving barns so
25 that there would be no forewarning at all.

1 DR. JENSEN: That's correct. Yes.

2 The second item that was discussed was
3 the progress of the Racing Medication and Testing
4 Consortium, which we have reported on in the past.
5 But as a review, it's a national organization that is
6 attempting to develop some sort of model rules to
7 promote and to achieve uniformity in the area of
8 medication rules and in drug testing.

9 And the Consortium has made good
10 progress. And I'm pleased to say that California has
11 a lot of representation on the Consortium and that,
12 at a recent symposium in Tucson, on December 10 of
13 this year, the first portion of the model rules were
14 presented to regulators.

15 After all, the Consortium is made up
16 of all representatives of the industry but really
17 have no regulatory power. That is vested in you
18 folks at all the different racing states. And so the
19 first recommendation for model rules was presented at
20 the racing symposium -- and Commissioner or Chairman
21 Harris was in attendance -- and I think it was well
22 received by all the commissions present.

23 I think there were 26 different racing
24 jurisdictions represented at that meeting. There
25 were some comments and constructive criticism of it

1 at that time. But it's going forward.

2 And at yesterday's meeting, we
3 reviewed how the regulations concerning the use of
4 bleeder medication, nonsteroidal anti-inflammatory
5 drugs, and anti-ulcer drugs were being proposed by
6 the Consortium and the differences between the
7 current CHRB rules and policy and the Consortium
8 recommendations were outlined.

9 And, in fact, there are not a great
10 deal of differences in the two -- between the CHRB
11 and the RMTC's proposals.

12 The third item was a review of the
13 testing for erythropoietin antibody that is being
14 conducted in the province of Ontario, Canada, and in
15 New York. And that testing for antibodies for
16 erythropoietin was started on November 1st of 2003.

17 And in personal conversation with
18 those jurisdictions, it was reported that, in
19 Ontario, they have tested approximately 6,000 horses,
20 and they have found 5 to be carrying the antibody for
21 erythropoietin.

22 And in New York, they have tested, I'm
23 estimating, a similar number. They test for the
24 erythropoietin antibody in all horses that are
25 subjected to postrace testing. And they have found

1 that they've had one horse that showed the presence
2 of these antibodies.

3 It's difficult at this point to make
4 any conclusions, but it doesn't appear to be a large
5 number of positives for erythropoietin antibody at
6 this present time.

7 CHAIRMAN HARRIS: I'd like to thank all the
8 people who participated in the meeting. I thought it
9 was a real good meeting. We need to do that -- it
10 was more an educational-type meeting. I thought it
11 went well. I appreciate Dr. Jensen's work.

12 Any comments on that?

13 Really appreciate the donor and also
14 Oak Tree's donation 'cause that will really kind of
15 jump-start this thing. It's a classic example of how
16 private industry can move faster than government
17 sometimes.

18 DR. JENSEN: Amen.

19 COMMISSIONER LANDSBURG: We have to get the
20 final reading -- oh, I'm sorry.

21 CHAIRMAN HARRIS: Yeah. Yeah. Well, yeah,
22 we're going onto the -- we're actually -- the group
23 that's trying to solve this issue here is supposed to
24 be getting back about -- getting closer -- they're
25 due to be back in about 10 minutes.

1 Let's go on with general business.

2 Any communications, reports, or requests for future

3 action of the Board?

4 COMMISSIONER LANDSBURG: Is there any forward

5 progress on the revision of the license? Or is that

6 an issue that is bubbling along?

7 John, do you know?

8 MR. REAGAN: Honestly, I do not know. Jackie

9 Wagner, I think, will be taking care of that. And

10 she's not with us today.

11 CHAIRMAN HARRIS: I think we need to look at

12 that. We talked about it, and it kind of got on the

13 back burner. But at some -- I'm concerned who --

14 COMMISSIONER LANDSBURG: It went back to staff,

15 as far as I knew --

16 CHAIRMAN HARRIS: Yeah.

17 COMMISSIONER LANDSBURG: -- for

18 recommendation -- review and recommendation.

19 CHAIRMAN HARRIS: I'm always frustrated, when

20 we look at these license applications, they don't

21 really tell you sometimes what you really ought to

22 know. It's more --

23 COMMISSIONER LANDSBURG: But we had discussed

24 whether or not the -- as a condition of license, the

25 racing association must make its signal available to

1 any licensed organization -- any licensed ADW
2 organization. I didn't know what the status was
3 while we were talking about it.

4 COMMISSIONER LICHT: Part of the problem might
5 that Governor Schwarzenegger mandated all boards not
6 to issue any new rules and regulations. Am I right
7 there? Does that make --

8 CHAIRMAN HARRIS: Maybe that's part of the
9 problem. But I think we can still talk about 'em.

10 COMMISSIONER LANDSBURG: Right. I just
11 wondered if it had been discussed and if Jackie had
12 made any recommendations.

13 CHAIRMAN HARRIS: When are we going to get a
14 report back on the matter? Maybe Jackie could call
15 back --

16 MR. REAGAN: We'll certainly take care of it.
17 Yes, sir.

18 CHAIRMAN HARRIS: Thank you.

19 COMMISSIONER LICHT: I have a couple of old
20 business.

21 CHAIRMAN HARRIS: Go ahead.

22 COMMISSIONER LICHT: First thing is I think
23 it's important that we publicly state that the
24 lawsuit that Racing Services and that the North
25 Dakota people -- "Susan Ballisters" (phonetic), who's

1 now defunct -- filed against "Stevenson and
2 Associates" (phonetic) has been dismissed.

3 So we don't have to concern ourselves
4 with any of those Racing Services issues that we were
5 discussing at some point.

6 And also I just wanted to state that I
7 had the pleasure of going to Caliente. And I hope
8 that all the Commissioners will have -- will do the
9 same. And visiting their hub down there and seeing
10 how they literally bring in bets from all over the
11 world simultaneously -- it was a fascinating trip.

12 And I strongly recommend it to
13 everybody in the industry to see what they do, where
14 they're bringing in a bet from Peru at the same time
15 that they're bringing another one in from somewhere
16 in Europe, on our races all through this massive
17 computer system. It's just --

18 CHAIRMAN HARRIS: As I understand it, it's
19 all -- it's not really hooked into a large pool.
20 It's basically booking bets.

21 COMMISSIONER LICHT: Yes.

22 CHAIRMAN HARRIS: They have separate rules
23 that they operate --

24 COMMISSIONER LICHT: No. They outright book
25 it. But they have these incredible risk-management

1 programs where they can tell if a horse is 5 to 1 at
2 Santa Anita and it's 2 to 1 in their pools and they
3 limit the amounts of money that they take in. It's
4 really interesting.

5 COMMISSIONER LANDSBURG: Do you have any remark
6 about the fairgrounds ban on RTS?

7 COMMISSIONER LICHT: Well, at this time -- I
8 mean do you want to --

9 COMMISSIONER LANDSBURG: Yeah. The fairgrounds
10 now closes RTS betting from Lewis -- through
11 "Lewiston, Maine" (phonetic) at one minute before
12 post time, I think it is. I have no idea what does
13 it's done to their handle.

14 CHAIRMAN HARRIS: Yeah. I thought that was
15 interesting 'cause I think that's prudent on their
16 part. I was always told you couldn't do that because
17 you couldn't close just one slot or something. But
18 they -- we have had so many controversies on that
19 main hub that it would be nice to --

20 COMMISSIONER LANDSBURG: It looks as though we
21 have our group back.

22 COMMISSIONER MORETTI: In terms of old
23 business from the legislative committee, in regards
24 to AB 900, the governor vetoed that. He sent it back
25 this morning and with a letter. And basically

1 paraphrasing that letter, I'll tell you what it said.

2 It was the governor understands the
3 horse racing industry's been severely impacted by the
4 worker's compensation crisis and he agrees generally
5 with the concept of the bill. However, he has
6 several concerns with it. And so therefore he
7 returned the bill without his signature.

8 His concerns included his desire for a
9 comprehensive worker's comp reform package. And as
10 you may know, he's asked the legislature to act
11 before March 1st.

12 His concerns also included the fact
13 that this particular bill was "gut and amend." And
14 he has publicly indicated his desire not to have
15 those kinds of bills come to his desk because he
16 doesn't believe that the full vetting process has
17 taken place on those bills.

18 His letter, as I understand it, also
19 specifically focussed on issues that could be
20 addressed in any such future legislation which would
21 include the methods of distribution. If the reform
22 package does not come to his desk, then he would
23 probably entertain another bill from the horse racing
24 industry where all parties have come together that
25 address his concerns.

1 COMMISSIONER LICHT: For Government 101, what
2 would have to happen to override the governor's veto?

3 COMMISSIONER MORETTI: Another two-thirds
4 vote. But I don't think we could get that in this
5 case.

6 CHAIRMAN HARRIS: Yeah. I think that you need
7 a two-thirds vote. But usually it's kind of a
8 precedent. They don't do it on an issue that's not,
9 you know, a real --

10 COMMISSIONER MORETTI: Yeah.

11 CHAIRMAN HARRIS: -- thing.

12 COMMISSIONER MORETTI: I don't think that,
13 right now, you could get that.

14 CHAIRMAN HARRIS: This early in -- but I think
15 that you could do another bill with emergency status
16 and get it to them at some point. I think it's too
17 bad. If this would have gone in -- if it had an
18 urgent status, it would have gone in immediately.
19 But now everyone has to start over.

20 But I did express some concerns I had
21 with the bill although I supported the bill and, you
22 know, didn't have any negative communication with the
23 governor's office on that bill.

24 But I was concerned about some of the
25 same things he was concerned about. I think his veto

1 did have some merit. And it wasn't due to a lack of
2 understanding. It was just due to -- I think to take
3 it as -- some people may have interpreted it as
4 something that was anti-horse racing. It was just
5 more of a difference in policy.

6 I would actually like to get back
7 here, under general business -- Sunshine Millions.
8 This event is coming up on Saturday at Santa Anita.
9 It's a joint production of basically California and
10 Florida, including TOC and CTA and the Magna
11 organizations. And it has the -- it has the promise
12 of becoming a big day. We need more big days. And
13 this could be one. And we wish and we hope it does
14 well.

15 Okay. We're back -- or I will go back
16 to Item 1 unless anybody else has anything?

17 COMMISSIONER BIANCO: I have something -- I
18 have something in new business, John.

19 I can probably, you know, look at this
20 harness racing industry. That's how I originally --
21 from the same geographical area as Alan -- got
22 involved with racing, you know. What I kept hearing
23 here is that Cal Expo could take over the trotting
24 program that Capitol is doing right now.

25 I get a little bit upset with myself

1 for not thinking forward that, when you try to get
2 into arbitrating something, we're getting to the
3 last -- we're getting to the finalization of -- we
4 issued an order last May; right? We didn't put
5 Plan B in effect, if this didn't work out.

6 And I'd hate to see us lose an
7 industry or not have harness racing in California
8 because we weren't forward-enough thinkers to think
9 that something would get done. And I'm a little bit
10 upset myself for not stating to the Board, you know,
11 maybe three months ago, four months ago -- "Maybe
12 there's no resolution yet. There's no resolution."

13 I would like to find out if we could
14 put Plan B in effect or if it's too late to ask Cal
15 Expo to, in case this problem does not resolve
16 itself.

17 CHAIRMAN HARRIS: I think that's a good point.

18 Could Cal Expo respond to that?

19 MR. ELLIOTT: Commissioners, Dave Elliott,
20 California State Fair.

21 I've been instructed by our board and
22 our general manager to let this Board know that we,
23 at Cal Expo, to stand ready at the direction of this
24 Board to do whatever it takes to get -- maintain
25 harness racing in California.

1 If it so happens that we need to step
2 in and operate the meet on an interim basis, until
3 this reissue is resolved, we stand ready to do that.
4 As you may or may not know, Capitol Racing does have
5 a contract with us until July of 2005.

6 We are in the process at this time of
7 putting out requests for qualifications, and then we
8 will be putting out requests for proposals for meets,
9 harness meets at Cal Expo, beginning in September of
10 2005.

11 But, again, I've been directed by my
12 board, just to let this Board know that -- and,
13 again, let me also mention that Capitol Racing
14 obviously is a tenant of ours. But if we need to
15 step in, at the direction of this Board, to operate
16 on an interim basis while this issue is being
17 resolved, we stand ready to do that.

18 COMMISSIONER BIANCO: Thank you.

19 CHAIRMAN HARRIS: Any other issues? Go ahead.

20 MR. HOROWITZ: Alan Horowitz, Capitol Racing.

21 It was nice to get his offer. The
22 bottom line is there is no statutory authority for
23 the fair to run harness racing. It has to be done by
24 a lessee of the fair. And currently we are lessee
25 through July of 2005, obviously subject to license-

1 fee approval.

2 MR. NEUMEISTER: They have tried to get
3 statutory authority to run a meet before and have not
4 been able to obtain it. The fair cannot run a meet
5 under the statutes.

6 Within 60 seconds, we will have an
7 offer for you of some sort.

8 CHAIRMAN HARRIS: Okay.

9 AUDIENCE MEMBER: Well, why don't you -- why
10 don't you speak on our behalf?

11 CHAIRMAN HARRIS: Do you want to take a break
12 for about five minutes?

13 COMMISSIONER LANDSBURG: John, why don't you
14 take a break for us? Thank you.

15 CHAIRMAN HARRIS: Take a break for five
16 minutes.

17 (Break: 1:22 - 1:40 P.M.)

18 CHAIRMAN HARRIS: Let's call the meeting back
19 to order and see if we have any version of a
20 consensus reached.

21 MR. BLONIEN: Mr. Chairman, Rod Blonien on
22 behalf of Los Alamitos. I think we have an agreement
23 to have this Board arbitrate the issue, the two
24 issues.

25 The first issue is "What should be the

1 fee, if any, going forward beginning January 1 of
2 this year?" And the second issue would be, "Taking
3 the attachment to the Zumbrun agreement and applying
4 it to your order, what is the amount of the money
5 that's owed?"

6 Is that correct?

7 MR. NEUMEISTER: The way I understand it is
8 the matter to be arbitrated would be "For what time
9 periods, if any, are we obligated to pay any impact
10 fee?" and "Whether or not we are obligated to pay
11 anything prospectively; and if we are, on what
12 terms?" And in the meantime, we're going to keep
13 talking.

14 COMMISSIONER LANDSBURG: I don't know that that
15 changes anything. It's more of the same thing.

16 CHAIRMAN HARRIS: Well, the Board would --
17 would --

18 MR. NEUMEISTER: Did you disagree with me?

19 MR. SCHIFFER: We disagree. Dan Schiffer.
20 We don't want to litigate the future issue of whether
21 an impact fee is due or not. We're willing to
22 arbitrate what the time period is for a fee that is
23 owed, based on your May order, in the past.

24 But as to the future -- we're willing
25 to arbitrate the amount of an impact fee but not

1 whether or not there should be an impact fee. We
2 want to start with the assumption that there is an
3 impact fee.

4 CHAIRMAN HARRIS: So it would be with both
5 things tied together. It would be -- I mean you'd
6 have to really make both --

7 MR. NEUMEISTER: I have -- apparently we
8 misunderstood what we agreed to. We are not
9 conceding that we owe an impact fee prospectively.
10 That is a matter to be decided by the arbitrator --
11 if and how much, both retroactively and
12 prospectively. This is my understanding of what we
13 are submitting to arbitration.

14 And in the meantime, we've agreed to
15 keep negotiating with Los Alamitos. That is my
16 understanding.

17 COMMISSIONER LANDSBURG: I thought, from our
18 discussions, that you were going to come to us with
19 an agreement on all past monies and that you be able,
20 between you, to settle future arguments. It is only
21 on that basis that, in my understanding -- and I
22 leave it to other Members of the Board -- that when
23 you reached an agreement on the past and as to the
24 future -- your license application was challenged and
25 we want to be able to see that that license challenge

1 no longer exists.

2 MR. NEUMEISTER: We are very -- we really are
3 very, very close.

4 COMMISSIONER LANDSBURG: I can't help "very
5 close." That's only in horseshoes that that's
6 counts.

7 DR. ALLRED: David's statements about whether
8 we consent -- we will insist to the end that it's
9 perfectly appropriate for us to negotiate with the
10 Horse Racing Board's intervention if we can't agree
11 on the amount of the impact fee.

12 But the contention that there is none
13 due at all -- that there may not be any due at all --
14 we can't agree with that.

15 It's already been decided on by this
16 Board. An order's already been put out in the past.
17 There's no reason to believe that it would be
18 significantly different in the future.

19 MR. NEUMEISTER: As I read this -- I don't
20 want to rehash this any more than you do -- as I
21 reread it, that order does not necessarily require us
22 to pay an impact fee prospectively. I think that was
23 one of the questions. And the amount of the fee was
24 to be decided by the arbitrator for the --

25 DR. ALLRED: It could be one dollar a year.

1 It -- it could be whatever. But the issue of whether
2 it is payable is not to be arbitrated.

3 MR. NEUMEISTER: If it's not the subject of
4 negotiation, we are taking our position -- our legal
5 position on this issue is that we do not owe an
6 impact fee prospectively. That's what we submit for
7 arbitration. And that -- that was the way -- that
8 was what I understood we were submitting to the
9 arbitrator -- how much and if we owed both
10 retroactively and prospectively.

11 DR. ALLRED: No.

12 MR. NEUMEISTER: I guess we don't -- we don't
13 have an agreement at all, then.

14 COMMISSIONER LICHT: John, why don't we just
15 table that application until the next meeting and see
16 if they can come to some kind of agreement? The
17 court might have ruled by then as well.

18 CHAIRMAN HARRIS: I don't think we want to
19 necessarily deny it. I think we have to table --

20 COMMISSIONER LANDSBURG: You're effectively
21 saying that you cannot operate if you don't have a
22 license to go forward. If we table it, we have to
23 take their words that they cannot -- that they won't
24 be able to move forward with a racing meeting.

25 COMMISSIONER LICHT: Except if they have a

1 license. They -- the meet doesn't open until after
2 our next meeting.

3 CHAIRMAN HARRIS: When does the next meet
4 open?

5 MR. NEUMEISTER: Early March.

6 CHAIRMAN HARRIS: When is our next meeting?

7 MR. MINAMI: I believe --

8 COMMISSIONER LICHT: We could move our next
9 meeting up.

10 CHAIRMAN HARRIS: We could move our next
11 meeting date up a little bit.

12 MR. MINAMI: -- February 19.

13 CHAIRMAN HARRIS: We could move it up or
14 something.

15 MR. NEUMEISTER: February 19? Okay. The meet
16 doesn't start until March.

17 CHAIRMAN HARRIS: You're okay on that? Okay.

18 COMMISSIONER LANDSBURG: We can call an
19 emergency meeting, but I don't know that it's
20 warranted because we're still in the process of
21 arbitration. And if that arbitration is
22 unsatisfactory, what happens then? We're in a
23 binding arbitration, but I've seen that fall apart
24 too.

25 CHAIRMAN HARRIS: Well, I'm not clear --

1 MR. NEUMEISTER: In addition, there's the
2 lawsuit that's out there. There's a hearing on that,
3 I think, February 13, if I'm not mistaken, on your
4 demurrer. I mean what happens if we survive the
5 demurrer? There's just a lot of questions.

6 CHAIRMAN HARRIS: I'm not clear on the
7 arbitration. If we all go home today, who is really
8 going to arbitrate and between who? Is it between
9 the quarter horse association and the harness racing
10 association? Or between us and Los Alamitos? Or --

11 COMMISSIONER LICHT: Just determining the
12 exact dollar amount. So I don't know if it's
13 arbitration or if it's more of a study or something.

14 MR. MINAMI: Mediation.

15 MR. BIERI: Steve Bieri again.

16 Mr. Landsburg, I didn't understand
17 what you said on the numbers. And when we just went
18 into that room, I was amazed at the number of numbers
19 that went around that room.

20 And one of the things that Mr. Allred
21 and I had decided to do was meet next Wednesday at
22 Los Alamitos and put those numbers down on paper and
23 see what they really mean. He's just infinitely more
24 familiar with them than I am. I apologize for that.

25 But 95 percent of this or 65 percent

1 of this or 20 percent of some other number -- he just
2 has a better handle on it. I just need to see it
3 written down and then see how does it really look?
4 'Cause at the end of day, it comes down to the bottom
5 line.

6 So as Mr. Neumeister said, we'll
7 continue to talk. It's possible we have an
8 agreement. I just don't know the full interpretation
9 of what was said in that room. I need to understand
10 the impact to the bottom line to see what I'm
11 agreeing to.

12 So we're going to get together next
13 Wednesday. Maybe that will work. And maybe we'll be
14 back in front of you on the 19th. But we're going to
15 give it a good college try.

16 I apologize if I am the one that is
17 stopping up that progress. But I just need to
18 understand what I'm agreeing to, what it does to my
19 bottom line.

20 COMMISSIONER LANDSBURG: Then is the -- I
21 want -- you're not making it clear to me. And I have
22 one of the votes that will go forward here. Were you
23 saying that, on Wednesday, you will have, at the end
24 of Wednesday, an agreement?

25 MR. BIERI: I am saying that my understanding

1 of what's going to take place is we will quantify all
2 of these various proposed numbers -- "And this goes
3 backwards. And this goes forwards. And this is out
4 of that," and all of that -- so that, at the end of
5 the day, we will know exactly where we are and if we
6 do have an agreement.

7 That's what I'm saying -- it's
8 possible that we have an agreement, but I can't
9 promise you that we do because I don't know what all
10 those numbers add up to.

11 COMMISSIONER LANDSBURG: Well, we are back
12 to -- what is the song? "Promises, Promises,
13 Promises"?

14 MR. BIERI: No. I'm not making my promises.

15 COMMISSIONER LANDSBURG: Well, we're back to
16 more discussions, more meetings. And we have an
17 order standing in front of us that has an important
18 relationship to whether or not our harness racing
19 will continue. It is not my personal desire to have
20 it killed.

21 On the other hand, we have been
22 through meetings and meetings on top of meetings on
23 top of meetings. This order has been in effect since
24 the 12th of May. If you're saying to me that you
25 want binding arbitration done in the three-day period

1 and be all finished, I might be willing to say we can
2 hold off for three days.

3 But you already said to me you can't
4 do the meeting if it goes another month. Now is that
5 tragically wrong? Or is that proper?

6 MR. BIERI: I believe that comment came
7 earlier in the day. I -- I don't know if the speaker
8 wants to address that. But it appeared that you were
9 speaking to me. So my understanding is that the
10 potential for harm is there the longer that we take
11 to go -- that we take to go forward.

12 Is it absolutely a fact that, if we
13 don't know until February the 19th that our license
14 is approved, we won't race at all for the balance of
15 the meeting? I don't believe that that's the case.

16 We could have some attrition. We
17 could lose some horsemen. Those things could happen.
18 But I don't know. I don't think it's fatal. That's
19 my understanding -- that this could be deleterious.

20 COMMISSIONER LANDSBURG: Yeah. We have a
21 responsibility that you are now asking us to duck
22 again. And that responsibility is to see that this
23 is over and done with. And it either means you will
24 lose your license because we will not approve it and
25 seek other people to take over that license.

1 If you say to me, "We can do this, in
2 the period of the next four-and-a-half or five days,"
3 then I say to you, "I would be willing to vote." I
4 don't know about the rest of the Board Members.

5 But I certainly don't want to sit here
6 until mid-February with this hanging over racing and
7 knowing that we are injuring and even perhaps fatally
8 injuring your ability to hold your people together.
9 And we're holding your feet to the fire, all of you,
10 because I don't want to see harness racing die.

11 I don't even want to see it impeded.
12 If it's being impeded because you can't find the
13 right number, then I can only ascribe it to greed.
14 And that's a terrible way to kill a race meeting.

15 MR. BIERI: I would --

16 COMMISSIONER LANDSBURG: So I'm trying to say
17 to you -- Wednesday, if you agree -- Wednesday, you
18 should have an agreement. If you need future binding
19 arbitration, as a condition in the future -- that is
20 what the future holds -- I can understand it.

21 If you are saying to me that you have
22 to go back through the whole deal -- it may take a
23 whole month -- then I say to you, "I don't think -- I
24 would not vote with this Board to renew the license."

25 MR. BIERI: I believe there are other

1 characterizations other than the choice of the word
2 that you used. But that would only be proved out if
3 you sat down to look at various numbers. Then you
4 could decide what avarice there was or if there is
5 any.

6 COMMISSIONER LANDSBURG: I don't have any
7 desire to be the arbiter of your argument.

8 MR. BIERI: I understand that. I guess
9 what --

10 COMMISSIONER LANDSBURG: It's timing, Steve.
11 It is -- at best and at worst, it's a matter of
12 timing. This timing, this clock began running a long
13 time ago.

14 MR. BIERI: I understand that.

15 COMMISSIONER LANDSBURG: And we have an order
16 that we have made that nobody has paid any attention
17 to. We are willing -- I am willing on behalf of
18 myself to extend it seven days. That's it.

19 CHAIRMAN HARRIS: Could we come back? I mean
20 I think we'd still have to come back and approve it,
21 regardless of what they do so --

22 COMMISSIONER LANDSBURG: Well, in terms of
23 their having an agreement and withdrawing the
24 lawsuit -- there is no further challenge that exists
25 over this problem of issuing a license. This is

1 continuing agitation, agitation that began four years
2 ago, because it was the first thing I ever heard on
3 this Board.

4 MR. BIERI: I wish the agitation only began
5 four years ago. I don't know, on the conversation
6 between Mr. Blonien and Mr. Neumeister, the
7 difference between whether there is an impact fee or
8 that it could be one or the other or what the
9 differences are.

10 I was asked would I be willing to
11 submit this to two Members of the Board for binding
12 decision city.

13 And I said, "Yes," to that. I don't
14 understand the technicalities of that. I'm willing
15 to meet with Mr. Allred next Wednesday and go through
16 all the numbers. Hopefully, they will come out there
17 where I'm stuck also.

18 So at the end of the day next
19 Wednesday, if that means we don't have an agreement,
20 then I guess you folks do what you do the day after
21 that. But as I said, just the concept of having you
22 folks really define what we're looking at here would
23 be very helpful, Mr. Landsburg.

24 CHAIRMAN HARRIS: I think we could -- it would
25 be preferable if the parties could mutually agree

1 rather than take it to arbitration. Hopefully,
2 arbitration would be something that was a last
3 resort. So if these parties could agree -- which we
4 could give you a week's time to do that -- if, then,
5 that didn't happen --

6 MR. BIERI: I need to say something. Then I
7 won't get up again. Then I'll bide my time, I think.
8 We're talking about money. And it's just a function
9 of taking about Mr. Reagan's numbers and figuring
10 which of those dollars that he's calculated applies
11 to what you are attempting to do and which ones
12 don't.

13 We can try to work with it ourselves
14 next Wednesday. And if we don't, we'd like you folks
15 to tell us because, as we said earlier, we would
16 agree with the Paragraph 14 on our interpretation but
17 we don't know if that's your interpretation. We know
18 our interpretation, and we know Los Alamitos's
19 interpretation. We don't know your interpretation.

20 And so, in the spirit of getting to
21 that interpretation, we can continue to meet and try
22 to work it out ourselves and try to figure out what
23 you folks meant.

24 But at a certain point in time --
25 that's what we're going to try to find out. Once we

1 know that, once we figure out the numbers, that's
2 when we would agree or disagree with your order and
3 comply or not comply at that time.

4 CHAIRMAN HARRIS: If we come back and say here
5 what we think the deal is and then no one's willing
6 to go along with it, it's not going to accomplish a
7 lot.

8 MR. BIERI: But at least it tells us what you
9 folks thought.

10 CHAIRMAN HARRIS: Oh, 'cause we already have
11 our order out, I guess the idea would be that we're
12 further defining our order but it wouldn't remove the
13 order.

14 MR. BIERI: Your staff took that. And they
15 said, "Here's the biggest number." But they don't
16 know whether that is right or not. You've got to
17 tell 'em what's the number -- Mr. Allred and his
18 number, the staff and their number. I think people
19 can read those words and disagree as to what they
20 meant.

21 That's why we're saying for you folks
22 to say, 'cause in one instance we believe we comply
23 completely, but it's not satisfactory to Mr. Allred.
24 Mr. Allred in another -- he thinks they comply
25 completely, and it's not satisfactory to us. Really,

1 then, what does it say?

2 CHAIRMAN HARRIS: Any comments? Well, I
3 suggest we table it and come back. I don't know if
4 we can -- if we should have some preappointed
5 arbitrary -- arbitrator procedure if they don't get
6 it solved in a week or if we revisit that at that
7 point.

8 COMMISSIONER LICHT: Why don't we revisit it?
9 I mean you can make that decision as Chairman, I
10 think. Maybe they'll agree on some things and not on
11 others. Maybe they'll agree on the past. Maybe they
12 won't agree on the future.

13 CHAIRMAN HARRIS: But then our thought would
14 be that we appoint whoever's not here today to be our
15 commissioners to work with them.

16 Ms. Moretti has to catch a flight.

17 But is there a motion?

18 COMMISSIONER LICHT: To do what?

19 CHAIRMAN HARRIS: To table this.

20 COMMISSIONER LICHT: Do we need a motion?

21 CHAIRMAN HARRIS: We don't need a motion to
22 table? Just don't do it? Okay.

23 COMMISSIONER LANDSBURG: As of this moment,
24 there is no license approval.

25 COMMISSIONER LICHT: Right.

1 AUDIENCE MEMBER: That's correct.

2 COMMISSIONER LANDSBURG: That's what tabling it
3 does.

4 CHAIRMAN HARRIS: Yeah. So it's clearly
5 deferred to the February board meeting, absent sooner
6 resolution. If there is a resolution, we still got
7 to approve the license.

8 COMMISSIONER LANDSBURG: If all parties agree
9 that -- you know, I don't want to make a -- I had
10 hoped you could reach a settlement -- an agreement
11 among yourselves.

12 The Board's role here is to determine,
13 when this is a continuing problem, the manner in
14 which the license of Capitol Racing should continue.
15 Apparently we made our stand on that in May. You
16 went since May and didn't deal with this. It's under
17 the gun now. And the sooner you get it done, the
18 better off for everybody. Can we get it done in a
19 week's time?

20 AUDIENCE MEMBER: We can.

21 COMMISSIONER BIANCO: John, I'm not an
22 attorney, but I'll be very honest with you. I'm
23 scared to even bring it up now -- to ask for a backup
24 plan in case this falls -- this arbitration falls
25 through. I don't want to see anybody, laborwise,

1 miss a day's work, because we're not prepared to go
2 to Step B even if it's illegal.

3 What I was told when we had a break --
4 I want to make sure that harness racing does not die
5 and that none of the people employed in that industry
6 loses a day of work. So I don't know if I can put
7 that in a motion.

8 CHAIRMAN HARRIS: I don't know if we really
9 can quite get there right now, though. Obviously we
10 don't want anyone to lose work. But the issue is so
11 complex and there are so many different parties, it's
12 not something we could just --

13 COMMISSIONER BIANCO: No. No. I'm only
14 saying that come, when this starts, if we're not --
15 if we don't have Plan B in effect, I'm going with
16 Plan A. I don't know the numbers. I heard numbers
17 from 500,000 to \$4 million. To be frank with you, I
18 don't know where, you know, we can start.

19 I -- I believe that the CHRB, the way
20 they're interpreting it, the staff is, is that it's
21 around a \$3 million number. And today I hear it's a
22 \$4 million number. And I would just like to say that
23 I'd like to see Plan B in effect so this industry
24 doesn't die and the people that have to schedule --
25 even the horsemen -- to schedule that they want to

1 remain in California.

2 But if we send out a negative
3 response to the requests that we're hearing to
4 extend it to the end of next month, we're going to
5 lose some, you know, participants that are active
6 right now.

7 CHAIRMAN HARRIS: And probably the best --
8 that's the only tool we have to really force a
9 settlement. If we say, "Don't worry about it," then
10 nothing's going to happen.

11 COMMISSIONER BIANCO: Right.

12 MR. MINAMI: Mr. Chairman, if I may, I would
13 like to clarify, for my own understanding, as to what
14 transpired prior to the last breakout. My
15 understanding was that the Board asked the parties to
16 get together to find an agreement to the parameters
17 of a meeting with two of the Board Members.

18 And as I understand it, the parameters
19 were two issues. One was to determine the time
20 period of the fee; and, two, to determine the amount
21 of the fee. So once those two parameters were agreed
22 upon, then the Chairman would assign two Board
23 Members to facilitate a decision or determination on
24 those two specific items. Is that correct?

25 MR. BLONIEN: I believe so. Yes.

1 CHAIRMAN HARRIS: I'm not sure what happens,
2 though, if we come back and say, "Okay. The fee --
3 you know, the fees are the numbers." Do all the
4 parties agree to accepting those numbers?

5 MR. MINAMI: Well, my understanding was that,
6 prior to the breakout, that once the parameters were
7 agreed upon, then they would abide by the Board or
8 the two-member recommendation of those two specific
9 items -- the amount of the fee and the time period
10 of --

11 MR. NEUMEISTER: That is correct. The spot
12 that we are at odds over -- and I didn't realize this
13 until just a couple of minute ago -- is that Los
14 Alamitos doesn't think that part of the deliberation
15 of the arbitrator should be the question of whether
16 an impact fee is due prospectively or not.

17 They want an assumption that there is
18 an impact fee that is owed prospectively, which, of
19 course, is just the opposite of our position in all
20 the litigation ever since all of this started.

21 Now, of course, when we're
22 negotiating, it's a whole different story. But if
23 we're going to an arbitrator, they're going to give
24 their side of it and they're going to tell their --
25 give their information.

1 Our position is that we don't believe
2 that, under the law, that the Board has the authority
3 to impose an impact fee. And they're going to say
4 that they do. And then you guys are going to decide
5 whether or not we do and, if we do, how much. And if
6 that is the case, if those are the parameters, then
7 we would agree to whatever result the Board comes
8 to -- than binding arbitration. We'd have to live by
9 that.

10 DEPUTY ATTORNEY GENERAL KNIGHT: Can I just
11 comment? What he's asking is for you to redo what
12 has been going on for two or three years, which was
13 the result of that order.

14 The order spells out what the
15 obligations are of the parties. And it does not
16 allow you -- or an arbitrator should not, at least,
17 allow them to revisit all the arguments that were
18 presented earlier as to whether you had the authority
19 or not.

20 What's before the Board is, as I see
21 it, at least, is that you have an order that's final.
22 At this point, it's just a question of interpreting
23 that order, not going back and making all these
24 arguments about what they think the law is.

25 MR. NEUMEISTER: Mr. Derry, I agree with you.

1 But there's a question as to whether that order
2 contemplates a prospective fee.

3 DEPUTY ATTORNEY GENERAL KNIGHT: That would be
4 a legitimate question.

5 MR. NEUMEISTER: That's all I'm saying.

6 COMMISSIONER LICHT: If we assume the court
7 finds in favor of us on this demurrer, we can just
8 decide the amount at our next meeting, either in
9 executive session or public hearing.

10 So if they can't come to an agreement,
11 let's just decide it in public hearing.

12 DEPUTY ATTORNEY GENERAL KNIGHT: Yeah. The
13 order -- the order --

14 MR. NEUMEISTER: This is one way of handling
15 it. That's for sure. The other way is just to know
16 that that is a legitimate question and a question of
17 interpretation.

18 DEPUTY ATTORNEY GENERAL KNIGHT: Well, I don't
19 think it is. But you obviously think it is.

20 MR. NEUMEISTER: In other words, Mr. Derry,
21 you believe that the order does --

22 What? Did I mispronounce your name?

23 DEPUTY ATTORNEY GENERAL KNIGHT: That's my
24 first name.

25 MR. NEUMEISTER: Oh, I'm sorry.

1 DEPUTY ATTORNEY GENERAL KNIGHT: Oh, no
2 problem.

3 MR. NEUMEISTER: If I had my glasses on, I
4 would see that. So it's "Derry Knight"?

5 In other words, it is your position
6 that the order requires the harness industry to pay
7 an impact fee prospectively? That's how you
8 interpret that?

9 DEPUTY ATTORNEY GENERAL KNIGHT: I mean I
10 thought that that's what the order was all about.

11 MR. NEUMEISTER: Okay.

12 MR. MINAMI: My understanding -- and Mr.
13 Knight can correct me -- but my understanding was
14 that the issue of the impact fee -- the requirement
15 to pay an impact fee was already within the order and
16 that was already a given.

17 So the only two issues that are open
18 are the fee time period and the amount of the fee.

19 MR. NEUMEISTER: So --

20 MR. MINAMI: My position -- our position --
21 well, my position, I guess, hopefully with the
22 Board's concurrence, is that the Board's order is a
23 lawful order until the -- until the court decides --

24 MR. NEUMEISTER: No. I disagree with that.
25 When I read that order -- it does not require us to

1 pay a fee prospectively. It orders us to comply with
2 the formula under the Zumbrun agreement. And in my
3 mind, that does not include a prospective fee. That
4 would be a matter for the arbitrator to decide. I
5 think it's a legitimate question.

6 DEPUTY ATTORNEY GENERAL KNIGHT: Well, my
7 understanding is that the offer makes reference to
8 the Zumbrun agreement as creating the formula for the
9 computation of the impact fees. That's all it did.

10 MR. NEUMEISTER: So in your view, what that
11 order says is just, under your plenary powers, you
12 believe we ought to pay an impact fee? You're
13 ordering us to? Is that the bottom line, whatever
14 that number might be and whatever period of time?

15 DEPUTY ATTORNEY GENERAL KNIGHT: Well, the
16 order speaks for itself.

17 MR. NEUMEISTER: Well, I don't understand it.

18 COMMISSIONER LICHT: There's pending
19 litigation. I don't think it's proper for you to
20 discuss any of this stuff that's at issue. We should
21 either grant this license, or we should table it. We
22 should not discuss the litigation because it's before
23 the court and it's going to be determined in two
24 weeks.

25 I don't think we have any right to

1 discuss the merits of the litigation at this point.
2 Am I correct in that?

3 DEPUTY ATTORNEY GENERAL KNIGHT: No. That's
4 right.

5 CHAIRMAN HARRIS: Am I clear that, when that
6 court hears the case a few weeks from now -- are they
7 going to discuss the case or just discuss the fact
8 that it's under appeal?

9 DEPUTY ATTORNEY GENERAL KNIGHT: What's before
10 the court, whether it be granted or not, would be an
11 order dismissing the lawsuit as being untimely filed.

12 COMMISSIONER LICHT: Not on the merits.

13 DEPUTY ATTORNEY GENERAL KNIGHT: Right. Not
14 on the merits. It does not address any of the
15 issues.

16 CHAIRMAN HARRIS: So we're not going to find
17 out anything.

18 MR. NEUMEISTER: Unless it's dismissed. If
19 the case is dismissed --

20 DEPUTY ATTORNEY GENERAL KNIGHT: Yeah.

21 MR. NEUMEISTER: Yes.

22 CHAIRMAN HARRIS: Well, if the case is
23 dismissed, the order stands. If the case is not
24 dismissed --

25 MR. NEUMEISTER: It needs to be defined.

1 CHAIRMAN HARRIS: Yeah. But --

2 COMMISSIONER BIANCO: I make a motion that we

3 table the decision --

4 COMMISSIONER LANDSBURG: You don't need a

5 motion -- you don't need a motion for it.

6 COMMISSIONER BIANCO: Okay.

7 CHAIRMAN HARRIS: All we need if we are going

8 forward --

9 COMMISSIONER LICHT: Just a suggestion.

10 CHAIRMAN HARRIS: Well, we were just

11 concluding, as far as the timetable, where we've got

12 some window of time that the parties work it out.

13 But then what happens if they don't work it out?

14 Does the Board --

15 COMMISSIONER LANDSBURG: I understand --

16 CHAIRMAN HARRIS: -- revisit our order or

17 redefine our order or what?

18 COMMISSIONER LICHT: No, we don't. If the

19 demurrer is granted or not -- if we just -- all we

20 have to determine is whether we want to grant a

21 license to the harness people. We don't have to do

22 anything at this point. We have an order out there.

23 They've gone to court to have -- to

24 try to overturn it. If the demurrer is granted, then

25 we have an order which we have to enforce at our next

1 meeting as to what the amount of that order is. We
2 can then determine if we grant the license or don't.

3 We don't have to do anything. It's up
4 to them. The ball's in their court, I think.

5 CHAIRMAN HARRIS: So we go forth at the next
6 meeting. I mean if we -- I hate to see us come back
7 here and just rehash this thing all again.

8 COMMISSIONER LICHT: Either the court will
9 have ruled for us, in which case their case is then
10 thrown out or they'll rule for the harness people, in
11 which case, I would assume, they'll try to get a TRO
12 staying execution of our order. I don't know.

13 CHAIRMAN HARRIS: But if we -- as far as their
14 license goes, can we really give them a license if
15 they have an order that hasn't been satisfied?

16 DEPUTY ATTORNEY GENERAL KNIGHT: I think
17 that's a judgment call that the Board would have to
18 make.

19 CHAIRMAN HARRIS: Well, I hate to have
20 everyone go home and not have some resolution to
21 this. But I just don't think it's a resolution we're
22 going to get to today.

23 COMMISSIONER LICHT: A revolution.

24 CHAIRMAN HARRIS: But we'll have to get
25 something done in the February meeting, you know.

1 Anything else? It's adjourned.

2 (Proceedings concluded at 2:12 P.M.)

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REPORTER'S CERTIFICATE

I, NEALY KENDRICK, a Certified Shorthand
Reporter in the State of California, do hereby
certify:

That the January 22, 2004, meeting of the
California Horse Racing Board was taken before me at
Arcadia City Hall Council Chambers and was taken down
by me in shorthand and thereafter reduced to
computerized transcription under my direction and
supervision, and I hereby certify that the foregoing
transcript is, to the best of my ability, a true and
correct of the meeting.

IN WITNESS WHEREOF, I have hereunto
subscribed my name this 4th day of February,
2004.

NEALY KENDRICK
CSR 11265

